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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NAVIGATION BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Infrastructure and Transport
the Honourable Anthony Albanese, MP)

NAVIGATION BILL 2012

OUTLINE

This Bill will provide the primary legislative means for the Australian Government to regulate international ship and seafarer safety, shipping aspects of protecting the marine environment and the actions of seafarers in Australian waters. It also gives effect to the relevant international conventions to which Australia is a signatory.

In summary the new legislation will;

- recast the *Navigation Act 1912* in modern plain language;
- reflect contemporary conditions and practices in the shipping industry;
- remove unnecessary and out-dated provisions;
- enhance ship safety and protection of the marine environment;
- introduce greater flexibility to allow regulation to remain contemporary with national and international standards; and
- provide confidence and certainty for the shipping industry.

The Navigation Bill will replace the existing *Navigation Act 1912* with a contemporary legislative framework for maritime regulation. The Bill reflects changes in the maritime sector and will act in concert with the Marine Safety (Domestic Commercial Vessels) National Law which gives effect to the Council of Australian Government's (COAG's) decision for the Commonwealth, through the Australian Maritime Safety Authority (AMSA) to become the regulator of all domestic commercial vessels in Australia.

The international shipping industry is characterised by intense competition among international companies with relatively few barriers to entry and exit, which leads to strong downward pressures on prices in most market sectors. While these competitive pressures benefit shippers through lower freight rates, they also encourage ship owners and operators to seek cost minimisation wherever possible. Australia has a relatively high level of exposure to safety and environmental risks due to its heavy reliance on shipping services and the size of our overseas trade. Accordingly, Australia has traditionally been an active participant, primarily through the International Maritime Organization (IMO), to a multilateral approach to the regulation of maritime activities. This Bill reflects and supports this approach.

The principal forum for development of the international maritime law is the IMO, supplemented as appropriate by the work of the International Labour Organization (ILO) in areas of seafarer health and safety. The following IMO conventions have been ratified by Australia and apply to the safe operation of vessels at sea:

- International Convention for Standards of Training, Certification and Watch keeping for Seafarers 1978 (STCW)
- International Convention on Load Lines, 1966 (LL)
- International Convention for the Safety of Life at Sea 1974 (SOLAS),
- Convention on the International Regulations for Preventing Collisions at Sea 1972 (COLREGS)
- International Convention for Safe Containers, 1972 (CSC)
- International Convention on Tonnage Measurement of Ships 1969

In addition, this Bill ensures compliance with Australia's obligations under the International Convention for the Prevention of Pollution From Ships 1973 (MARPOL) where they have been enabled through the *Navigation Act 1912* and various state and Territory maritime laws

FINANCIAL IMPACT STATEMENT

The Bill is not expected to have any significant financial impact. The role of governments in regulating safety and environment protection is well understood and accepted, and is currently managed through the *Navigation Act 1912*. In view of the size of modern vessels and the potential damage they could do to the environment, it is appropriate for the government to adopt a precautionary approach to the management of the industry's safety and environmental performance, using internationally agreed standards as an appropriate benchmark. The fact that costs will be incurred in meeting internationally agreed regulations for shipping are generally recognised and accepted as warranted.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Navigation Bill 2012

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The *Navigation Bill (No.) 2012* (the Bill) is Australia's primary legislation regulating international ship and seafarer safety, employment conditions for Australian seafarers and shipboard aspects of protection of the marine environment. It is a key legislative vehicle to give domestic effect to Australia's port state control responsibilities and implements a range of international conventions covering matters such as the safety of life at sea; training and certification of seafarers; prevention of collisions at sea; watertight integrity and reserve buoyancy of ships; pollution prevention standards for ships; safety of containers, salvage; and determination of gross and net tonnage of ships.

The *Navigation Act 1912* is 100 years old. The Bill repeals the *Navigation Act 1912*, and replaces many of the unnecessary and out-dated provisions of the current legislation. The *Navigation Act 1912* has been subject to significant and repeated amendments to keep pace with changes in the domestic and international maritime environment.

The *Navigation Act 1912* has been subject to a comprehensive review and this Bill represents a complete rewrite of the existing legislation, and reflects contemporary seafaring and environmental protection conditions and practices.

Human rights implications

The Bill engages the following human rights:

Right to privacy

Presumption of innocence

Chapter 8 of the Bill includes provisions on enforcement powers which enable the regulator (the Australian Maritime Safety Authority) to detain vessels, and appoint inspectors to board, inspect, search and seize vessels in relation to ship and ship safety compliance. The Bill provides these enforcement powers to Inspectors for matters which are primarily aimed at the vessel or property. The Bill has been drafted and complies with principles stipulated in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide) developed by the Criminal Justice Division of the Attorney General's Department.

In addition, the Bill provides for enforcement powers equivalent to those provided for in current Commonwealth legislation including:

- The *Work Health and Safety Act 2011*, Section 163 – Powers of entry;
- The *Crimes Act 1913*, Section 3T - Searches without warrant in emergency situations;
- The *Quarantine Act 1908*, Section 66AB – The monitoring of premises; and,
- The *Customs Act 1901*, Section 185 - Power to board and search etc. ships and aircraft.

Vessel is a conveyance

Vessels are inherently mobile. The Guide (8.6) states that “a search without a warrant will only be permitted where the inherent mobility of the conveyance means there may not be time, or it would be impractical, to obtain a warrant”.

The nature of activities undertaken by vessels often means that they do not follow any predictable pattern or timetable. Some of these vessels may also be operating in geographically remote areas, a great distance from port and with limited or no mobile telephone access. In these circumstances, obtaining a warrant is impractical and may limit the regulators capacity to undertake their safety regulation role in a responsive manner. For this reason, the enforcement powers are appropriate and proportionate for the task.

The regulator conducts regular port State control (PSC) inspections in accordance with international guidelines and within the constraints of its authority.

Inspectors are guided by a set of ‘Instructions to Surveyors’ and a ‘Ship Inspection Manual’, which are based on the international convention requirements and resolutions of the International Maritime Organization (IMO) and the International Labour Organisation (ILO). From 1 January 2010 to 31 December 2012, the regulator conducted 3127 PSC inspections. It is not feasible for the regulator to obtain a court ordered warrant for each PSC inspection, as these inspections are carried out within short timeframes when a vessel is alongside in port. Therefore, such enforcement powers are proportionate to the task that the inspector is undertaking.

Exception for licensed premises

The Guide (8.6) sets out that “a person who obtains a licence or registration for non-residential premises can be taken to accept entry to those premises by an inspector for the purpose of ensuring compliance with the licensing or registration conditions. The Senate Scrutiny Bills Committee has said that these powers can be conferred “where a person has accepted a commercial benefit subject to being monitored by this means”.

Inspectors will be required to seek the express and informed consent of the Master of the vessel or obtain a warrant prior to entering a premise. However, an inspector may enter a premise that is not a residential premise without consent or warrant in order to gain access to the vessel under section 256. An inspector may also board a vessel without warrant or consent to monitor compliance, or to issue an improvement, infringement or other notice. Inspectors when undertaking monitoring activities routinely wear identifiable uniforms, however an inspector must, in order to exercise their powers lawfully under sections 255 and 256, also show his or her identity card if requested to do so.

Section 257 of the Bill requires a person to facilitate the boarding of a vessel by an inspector. The failure to adhere to this requirement is a strict liability offence. This clause requires a person (for example an employee of the vessel) to take reasonable steps to facilitate the boarding of a vessel for inspectors to carry out their compliance related duties. The inspector would already have shown identification prior to boarding as outlined above.

The strict liability offence applies when a person fails to facilitate the boarding arrangements by providing a safe and practical method for inspectors to board the vessel, for example, by failing to lower the gangway or pilot ladder for the inspector to board the vessel.

The failure to facilitate boarding would result in the inspector being unable to carry out his authorised compliance duties as a properly authorised delegate of the regulator; which is why this offence has been prescribed as a strict liability offence.

Conclusion

The Bill is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable and proportionate to the information sought and the safety benefits conveyed to the maritime industry.

Minister for Infrastructure and Transport, the Hon Anthony Albanese MP

OFFENCES AND PENALTIES

Strict liability offences

Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The offences also arise in a context where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, and the mental, or fault, element can justifiably be excluded.

The rationale is that people who are responsible for the safe operation of a vessels, such as vessel owners or Masters or others persons in control of aspects of the operation of a vessels, can be expected to be aware of their duties and obligations to meet safety and environmental standards that could affect persons on the vessel and the wider public.

For strict liability offences in this Bill, the prosecution will have to prove only the conduct of the accused. However, where the accused produces evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, would have made that conduct innocent, it will be incumbent on the prosecution to establish that there was not an honest and reasonable mistake of fact. The application of strict liability to certain offences has been carefully considered during the drafting of the Bill and is consistent with the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Penalties

The penalties for offences in the Bill are intended to reinforce the deterrent effect of the Bill and allow courts greater capacity to respond meaningfully and proportionally to the worst breaches by responsible persons. Where environmental damage, loss of a vessel, death or serious injury results from a breach, the social and economic costs are likely to be far greater than even the maximum fines imposed by the Bill. Therefore, the overall objective of the penalties in the Bill is to increase compliance with the Act and decrease the resort to prosecution to achieve that aim.

The Bill provides for three categories of offences, including offences that involve intentional conduct and carry the highest maximum penalty under the Bill, and reckless and negligent conduct, which attract relatively lower penalties commensurate with the level of cause attributed to the person's actions or inactions.

Penalties and the possibility of imprisonment in the most serious cases are a key part of achieving and maintaining a credible level of deterrence to complement other types of enforcement action, such as detention of the vessel or issuance of improvement notices. The maximum penalties provided in the Bill reflect the level of seriousness of the offences and have been set at levels high enough to cover the worst examples of offence.

The penalties are consistent with the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* where appropriate and are generally higher where significant damage or loss of life is possible or where significant deterrence is considered necessary.

Civil Penalties

Civil penalty provisions have been included in this Bill to provide an alternative to prosecution for an offence. Civil penalties in this Bill replicate those introduced to the *Navigation Act 1912* through the *Maritime Legislation Amendment Act 2011* and have provided an additional tool for the Regulator to ensure compliance with maritime safety and environmental protection under the previous Act.

The civil penalty provisions are considered to be appropriate and effective where contraventions involve harm to a person or a serious danger to public safety, are of sufficient size to justify the expense and time required to take the matter to court or where because of a contravention is by a corporate entity the higher financial disincentive that civil penalties provide is most likely to be useful and effective. The civil penalties in this Bill are appropriate and justifiable and contraventions of a civil penalty provision must be proved on the balance of probabilities in a court, and if so proven, the court may order a monetary amount to be paid as the penalty.

Choice of enforcement action

The Regulator, having regard to its enforcement objectives and options, will decide in each particular case whether to prosecute a fault-based or strict-liability offence, or whether to bring proceedings for a civil penalty order. A person may only be prosecuted for a fault-based or strict liability offence, not both, and once convicted of a criminal (fault-based or strict liability) offence a civil penalty cannot be pursued. However, proceedings for a contravention of a civil penalty provision could be brought prior to a person being prosecuted for a criminal offence.

Evidential burden

Some sections in this Bill place the onus of proof on the defendant for certain elements of the offence. An evidential burden requires a person to provide evidence of an asserted fact in order to prove that fact to a court. In some instances, the Bill places an evidential burden on an individual to demonstrate a reasonable excuse as to why they have failed to meet a duty or obligation.

This is because it would be significantly more difficult for the prosecution to prove these elements, than it would be for the defendant to disprove them, since the relevant information is known particularly to the defendant.

In clauses where the onus of proof is reversed, the exception is dependent on particular knowledge or intent of the defendant. The reversal of the onus of proof in these circumstances is considered to be consistent with the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

NOTES ON CLAUSES

Chapter 1—Preliminary

Part 1—Short title and commencement

Clause 1 Short title

This clause provides for the Bill, when enacted, to be cited as the *Navigation Act 2012*.

Clause 2 Commencement

This clause deals with commencement of the Bill. The table in this clause sets out the commencement dates for the clauses contained in the Bill. The short title and commencement clauses will come into effect on Royal Assent and the remainder of the Bill will commence upon proclamation, or if not proclaimed, 12 months after Royal Assent.

Part 2—Objects and simplified outline of Bill

Clause 3 Object of Bill

This clause sets out the Bill's objects of promoting safety of life at sea, safe navigation, and marine pollution prevention and underpins AMSA's role as the entity responsible for ensuring Australia complies with its responsibilities under relevant international conventions including its responsibilities in relation to port state control.

Clause 4 Simplified outline of Bill

This clause summarises the contents of the Bill by broadly describing the subject matter of each of the Chapters of the Bill.

Part 3—Provisions relating to the application of this Act

Clause 5 Extension to Territories

Clause 5 provides for the Bill to extend to all of Australia's external Territories.

Clause 6 Extraterritorial operation of Act

This clause provides for the Bill to apply outside Australia so that its application to Australian vessels anywhere is clear. Its application outside Australia is generally limited to Australian vessels, consistent with international law.

Clause 7 Act to bind the Crown

Sub-clause (1) has the effect that the requirements of the Bill will generally apply to the Commonwealth and the States and Territories and to vessels that belong to the Commonwealth and the States and Territories.

Sub-clause (2) provides that the Crown is not liable to be prosecuted for an offence, given an infringement notice, or subject to civil proceedings for a contravention of a civil penalty provision.

Clause 8 Geographical jurisdiction for offences

This clause provides for the geographical jurisdiction generally for offences in the Bill. It provides that section 15.3 of the Commonwealth Criminal Code applies to offences in the Bill. This means that an offence applies whether or not the conduct constituting the alleged offence occurs in Australia and whether or not a result of the conduct that constitutes the alleged offence occurs in Australia.

Clause 9 Geographical application of offences and civil penalty provisions relating to foreign vessels, etc.

This clause describes the geographical application of the Bill in relation to owners and masters of foreign vessels including foreign recreational vessels. It does this consistent with international law. It provides for the application of offence clauses and civil penalties in the Bill in relation to foreign vessels only while they are in an Australian port, or entering or leaving an Australian port, in Australia's internal waters, or in its territorial sea. The right to innocent passage through the territorial sea is preserved, and in some cases excluded, consistently with United Nations Convention on the Law of the Sea done at Montego Bay, 10 December 1982 (UNCLOS).

The boundaries of ports are well established. The terms 'internal waters' and 'territorial sea', in relation to Australia, are defined in the *Seas and Submerged Lands Act 1977*. Whether a vessel is in the course of 'innocent passage' is determined in accordance with UNCLOS.

It is noted that other clauses of this Bill disapply this clause to specified offences and civil penalties in those clauses.

Clause 10 Act does not apply to naval vessels etc.

This clause excludes warships and other vessels operated for naval or military purposes by Australia or a foreign country from the operation of the Bill. For this exclusion to apply, these vessels must satisfy certain criteria relating to external markings, manning, and command that are consistent with the definition of warship in Art 29 of UNCLOS.

The clause also excludes from the operation of the Act certain government vessels that are naval auxiliaries and customs and law enforcement vessels operated by a foreign country.

Clause 11 Application of Bill to certain customs vessels

Clause 11 recognises the special role of Australia's border protection vessels (other than Navy vessels) and the challenges they face in complying with all clauses of the Bill while on operational duty. To avoid the need to obtain exemptions from the Bill in such circumstances, often on very short notice or in time critical circumstances, this clause provides for a standing arrangement for identified customs vessels that is intended to produce a safer outcome for those onboard. The arrangement is that a vessel that is used for the purposes of the Customs and Border Protection Service is exempted from complying with particular clauses of the Bill relating to seafarers (Chapter 2), vessel safety (Chapter 3), and safety of navigation (Chapter 6) in certain circumstances.

Those circumstances are where there is in place, in relation to the vessel, a customs vessel management plan which sets out requirements, including alternative requirements, to be met in relation to those clauses and those requirements are being complied with. It is envisaged that this plan will be prepared by Customs and reviewed and accepted by independent experts in accordance with the regulations.

Where the customs vessel management plan does not provide alternative requirements to be met in relation to clauses of the Bill, the clauses of the Bill continue to apply.

This arrangement would be available only for those vessels that are declared by AMSA to be customs vessels for this purpose.

Clause 12 Provisions that give effect to various Conventions

Clause 12 provides that a clause of the Bill which gives effect to an obligation imposed on Australia under specified international conventions and which would otherwise apply to a domestic commercial vessel does not operate, or is 'dis-applied' in relation to such a vessel, where the proposed *Marine Safety (Domestic Commercial Vessels) National Law) Bill 2012* (the National Law) gives effect to that obligation for that vessel. This means that if a National Law clause implements requirements of these Conventions, those requirements in the National law will apply to a domestic commercial vessel, and the relevant clause in this Bill is 'rolled back'.

Where the National Law does not give effect to an obligation imposed under one of the conventions the clause provides for the roll-back of the provision of the Bill which would otherwise apply to a domestic vessel or to a recreational vessel, where State and Territory law gives effect to the obligation in respect of those vessels.

The specified conventions are:

- (a) the SOLAS;
- (b) the Prevention of Pollution from Ships Convention; and
- (c) the International Regulations for Avoiding Collisions at Sea (COLREGS).

In relation to COLREGS, the roll-back is not effective where a vessel is on the high seas and the clause in this Bill will apply in those circumstances.

Clause 13 Provisions that give effect to the Container Convention

Sub-clause (1) provides that regulations under the Bill that give effect to the Container Convention will not operate (i.e., they will 'roll back') to the extent that a State or Territory law gives effect to that Convention.

Sub-clause (2) limits the imposition by State or Territory law of structural safety standards for containers that would exceed Convention requirements. Clause 339 provides similarly in relation to regulations made under the Bill.

Part 4—Interpretation

This Part provides for definitional matters for terms used in the Bill.

In addition, some terms the meaning of which may be useful in understanding the Bill, such as *continental shelf*, *exclusive economic zone* and *territorial sea*, are defined in the *Acts Interpretation Act 1901*.

Clause 14 Definitions

This clause defines most of the terms used in the Bill. Some of the definitions are signpost definitions that refer to the clause of the Bill (or other place) where the term is substantively defined.

Of particular note are the following:

accommodation

This definition is based on, and modernises, the definition in s 138B of the *Navigation Act 1912* (the 1912 Act).

aid to navigation

This definition replicates and expands the definition of marine navigational aid contained in the *Lighthouses Act 1911* to expressly include advances in technology since 1911. The definition captures meteorological and oceanographic sensors as well as satellite navigation equipment, communications equipment and infrastructure and any other structure, mark, device or apparatus external to a vessel that is used to aid marine navigation. A device or apparatus used, or for use, on a ship, other than a lightship, are excluded.

Australian nationality

The definition references the meaning of ‘Australian nationality’ in the *Shipping Registration Act 1981*.

issuing body

An issuing body is AMSA or a recognised organisation that has been prescribed by Regulations. These will be, as they have been under the 1912 Act, a limited number of approved classification societies. These are all full members of the International Association of Classification Societies and will carry out certification functions on behalf of AMSA. Issuing bodies can issue, vary and revoke various certificates issued under the Act on behalf of AMSA. Persons seeking safety or pollution certificates may engage any of these classification societies. AMSA retains responsibility for issue of seafarer certificates and for undertaking all audit and verification work associated with compliance with the International Ship Management (ISM) Code. The powers of inspectors under the Bill are not available to issuing bodies or their employees.

owner

The definition of ‘owner’ of a vessel is intended to be broad. It captures the ordinary legal or beneficial owner of a vessel (excluding a mortgagee), and extends to a person who has overall control and management of the vessel (although not simply because he or she is the master or pilot of the vessel) and a person who has assumed responsibility for the vessel from one of these other kinds of owner.

passenger

A passenger on a vessel is a person whose presence on board is known or agreed by the owner or representative of the owner, the charterer or the master and who is not a seafarer in relation to that vessel, a stowaway, a person who is onboard due to unforeseen circumstances such as shipwreck, or distress at sea or an infant. Special purpose personnel onboard a special purpose vessel are not passengers or seafarers.

recreational vessel

This term is defined to mean a vessel that is not for use in connection with a commercial, governmental or research activity. This definition is consistent with the commonly used term 'pleasure craft' which is used in the 1912 Act.

seafarer

The term 'seafarer' is used in the Bill in place of 'seaman' which was used in the 1912 Act. The term 'seafarer' has a broader meaning than seaman in the 1912 Act and includes any person engaged or working on board the vessel on the business of the vessel. Persons who are engaged or work on board a cargo vessel and who are seafarers under the definition include the master, mates, engineers, officers and ratings. Persons who are engaged or work on a passenger vessel and who are seafarers include stewards, hospitality and catering staff but will not include, for example, persons who are brought on board the vessel by a passenger as their personal staff.

special personnel

This definition is consistent with the meaning of special personnel in the IMO Code Of Safety For Special Purpose Ships, 2008.

vessel

This definition is intended to be as broad as the definition of *ship* in the 1912 Act. It extends to include barges, lighters, other floating craft and hovercraft. It omits an express inclusion of offshore industry mobile vessels and offshore industry mobile units because, to the extent that these are vessels, they will be within the terms of the definition. Like the 1912 Act, the Bill will not apply to vessels that are facilities within the meaning of Sch 3 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

The definition of vessel captures vessels owned by the Government, but only in some cases (i.e. they are otherwise defined as 'navy vessels' or 'customs vessels'). In circumstances other than these, government vessels will be captured if they meet the definition of Regulated Australian Vessels or hold an opt-in declaration. If these conditions are not met the vessels would be captured by the National Law.

vessel traffic service

Vessel traffic services (VTS) are recognised internationally as a navigational safety measure through SOLAS. They are shore-based systems which range from systems providing simple information messages to ships, such as the position of other traffic or meteorological hazard warnings, to systems for the extensive management of traffic within a port or waterway. VTS are implemented under Commonwealth or State law consistently with guidelines published by the IMO and International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA) and are provided by bodies authorised by AMSA.

work agreement

This is an agreement made between a seafarer and the owner of the seafarer's vessel. Regulations may be made under clause 54 of this Bill which will regulate the content and form of work agreements and the processes relating to such agreements. The work agreement is not the contract of employment but may include matters which are contained in the contract of employment.

Clause 15 **Definition of *regulated Australian vessel***

Sub-Clause (1) is fundamental to the scope of the Act in relation to Australian flagged vessels. A vessel is a regulated Australian vessel if it is a vessel of one of the following kinds:

- it is registered on one of the Australian Shipping Registers under the *Shipping Registration Act 1982*; or
- it is required to be registered under that Act; or
- it is a vessel of a kind described at section 13 of that Act as exempted from the requirement for registration.

In addition, the vessel cannot be a recreational vessel as defined by the Bill and one of the criteria listed in sub-clause (1)(c) must apply. These criteria are:

- (i) that the vessel is proceeding on, or is for use on, an overseas voyage;
- (ii) that a relevant AMSA certificate, for example, a SOLAS or MARPOL certificate, is in force in relation to the vessel; and
- (iii) that a declaration under cl 25 is in force in relation to the vessel.

Registration under the *Shipping Registration Act 1982* is required for Australian owned vessels. Sub-clause (2) provides that a customs vessel, as defined by clause 17, is a regulated Australian vessel.

Sub-clause (3) provides that if a declaration is made under clause 19 of the Bill in relation to a vessel in sub-clause (1)(c)(i) or (ii), the vessel is not a regulated Australian vessel.

Sub-clause (4) provides that a vessel in the course of construction is a regulated Australian vessel if, once completed, the vessel is to be used to undertake an overseas voyage or as a customs vessel.

Sub-clause (5) provides that a vessel in the course of construction includes a vessel that has been launched but not completed and delivered.

Clause 16 **Definition of *overseas voyage***

Sub-clause (1) provides that an overseas voyage for the purposes of the Bill is a voyage in the course of which the vessel goes beyond the outer limits of Australia's exclusive economic zone (EEZ). The limits of the EEZ are set out in the *Seas and Submerged Lands Act 1973*.

Sub-clause (2) makes a concession in relation to the special circumstances of the Torres Strait Protected Zone. A voyage will not be an overseas voyage if a vessel begins and ends at a port in Queensland and, although not the main purpose of the voyage, goes outside the EEZ but remains within the Protected Zone. This clause is based on and modernises the former section 2(3) of the 1912 Act.

Sub-clause (3) provides that if a vessel crosses the outer boundary of the EEZ because of severe weather, to save life or some other unavoidable situation, this will not render the voyage an overseas voyage.

Clause 17 **Definition of *customs vessel***

This clause defines a customs vessel for the purposes of the Bill. Sub-clause (1) provides for two requirements: the vessel must be one that is used for customs and border protection purposes and it must be the subject of a declaration by AMSA to that effect.

Customs and border protection purposes include the purposes of the Customs Act and other legislation administered by Customs and Border Protection and other border protection roles undertaken by Customs and Border Protection on behalf of other Commonwealth agencies, such as the Department of Immigration and Citizenship. The declaration serves as the basis for applying special safety arrangements to Customs vessels in place of the requirements of the Bill.

Sub-clause (2) provides that a declaration may be made under sub-clause (1) in relation to a single vessel or a class of vessels.

Sub-clause (3) provides that a declaration under sub-clause (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This is because this clause is merely declaratory of the law and is included to assist readers. It does not amount to an exemption from the *Legislative Instruments Act 2003*.

Clause 18 Definition of *special purpose vessel*

A special purpose vessel was a term used in the 1912 Act. Clause 18 defines the term in a way that is generally consistent with, but modernises, the definition in that Act. Where a vessel is specified by regulations as a special purpose vessel, the regulations will now also specify the special purpose for which the vessel is used or to be used. Examples of special purpose vessels include those that undertake activities such as scientific research, and are governed by particular arrangements specified in the SOLAS Convention that may not be appropriate to general passenger or cargo ships. This clause is consistent with the IMO Code Of Safety For Special Purpose Ships, 2008.

Clause 19 AMSA may declare that a vessel is not a regulated Australian vessel

Sub-clause (1) enables AMSA to declare that a vessel is not a 'regulated Australian vessel' for the purposes of the Bill. This clause allows vessels that ordinarily operate domestically to undertake a single overseas voyage without then remaining subject to the Bill.

Sub-clause (2) enables regulations to be made prescribing the matters of which AMSA must be satisfied before making the declaration.

Sub-clause (3) provides that a declaration under sub-clause (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This is because this clause is merely declaratory of the law and is included to assist readers. It does not amount to an exemption from the *Legislative Instruments Act 2003*.

Clause 20 Definition of vessel's *length overall*

Sub-clause (1) defines the term 'length overall' in relation to a vessel. The length overall of a vessel is one of the triggers for the requirement in clause 162 to engage a pilot.

Clause 21 Definition of *navigates without a licensed pilot*

Sub-clause (1) provides that a vessel navigates without a licensed pilot if the vessel does not have a licensed pilot on board to assist the master in navigating it.

Sub-clause (2) makes special provision for a vessel under tow.

Clause 22 Meaning of *taken to sea*

Sub-clause (1) defines the term *taken to sea*. The act of taking a vessel to sea triggers many offences in the Bill if the requirements of the Bill are not complied with.

This clause embraces not only the act of going to sea, plying, running or proceeding on a voyage, but also the intent as evidenced by the act of a vessel being “got underway for the purpose of going to sea”.

Clause 14 defines when a vessel is to be taken to be proceeding on a voyage.

Sub-clause (2) excludes certain movements within a port from the definition.

Clause 23 Definition of *seaworthy*

This definition also has an important role in triggering offences under the Bill and the exercise of powers by AMSA, including, detention. Unseaworthy vessels should not be put to sea. It also underpins requirements derived from the applicable international conventions designed to ensure the physical integrity and safe operation of a vessel. Seaworthiness is measured threefold and unless the requirements of all three requirements are satisfied, a vessel will not be seaworthy. Seaworthiness is measured by the fitness of the vessel to face the ordinary perils of the sea and not pose a risk to the environment. This is done by reference to the condition of the hull, equipment, boilers and machinery, the stowage of cargo and ballast with consideration of overloading, the living and working conditions of seafarers and the adequacy, both in numbers and qualifications, of the crew.

This definition replicates the definition in s 207 of the 1912 Act adding to that definition, modern requirements about living and working conditions on board.

Clause 24 Definition of *substandard*

The concept of a substandard vessel is also important for offence clauses and the exercise of powers by AMSA, including detention. Clause 24 defines when a vessel that is subject to the requirements of SOLAS, the Load Lines Convention or the Prevention of Pollution Convention will be substandard in relation to its condition or equipment in respect of a particular voyage or operation. Such a vessel will be substandard in two circumstances: if a certificate required by one of the identified Conventions is not in force in relation to the vessel; and, secondly, if relevant certificates are in force but the condition of the vessel does not correspond substantially with the particulars of the certificates.

Part 5—Opting in to coverage

Clause 25 Opting in to coverage—vessel declared to be a regulated Australian vessel

This clause allows for vessels not generally captured by this Bill to opt into coverage by, and therefore regulation under, the Bill.

Sub-clause (1) allows an owner of a vessel to apply to AMSA for a declaration that the vessel is a regulated Australian vessel even though it does not meet the definition in clause 15.

For example, some vessels which are regulated by the National Law may choose to opt in to regulation under this Bill even though they do not undertake overseas voyages in order to maintain existing international survey certification which would enable them to undertake overseas voyages.

Sub-clause (2) provides that AMSA must make the declaration if satisfied that the vessel is Australian registered, is seaworthy and is not sub standard. The regulations may prescribe other matters.

Sub-clause (3) sets a time limit for AMSA's decision of 30 days after the making of the application.

Sub-clause (4) provides that a declaration is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This is because this clause is merely declaratory of the law and is included to assist readers. It does not amount to an exemption from the *Legislative Instruments Act 2003*.

Clause 26 Revocation and variation of opt-in declarations

This clause describes when an opt-in declaration made under clause 25 ceases to have effect. Sub-clause (1) provides that an opt-in declaration will cease to be in force at the end of the period specified in the declaration or when the vessel ceases to have Australian nationality within the meaning of the *Shipping Registration Act 1981*, unless it is revoked before then.

Sub-clause (2) provides that if the owner or any of the owners of a vessel seek to have an opt-in declaration for the vessel revoked, AMSA must revoke the opt-declaration.

Sub-clause (3) allows AMSA to vary an opt-in declaration if the name or other details of the vessel have changed and AMSA considers it appropriate to make the variation. In addition, if AMSA thinks it is more appropriate to revoke an opt-in declaration where the above circumstances apply, it may do so under sub-clause 26(4). That sub-clause also allows AMSA to revoke a declaration if it is satisfied that the vessel no longer exists, is no longer registered under the *Shipping Registration Act 1980*, or is no longer seaworthy, or is substandard or no longer complies with regulations made under sub-clause 25(2).

Chapter 2—Seafarers

A ship's crew is an integral part of the safe operation of a ship. Standards for training, qualifications and certification are an essential means of minimising risk to both the crew from an occupational health and safety perspective and to the safety of the whole vessel and its cargo. As with other areas of maritime safety Australia's approach to these issues has been strongly supportive of international conventions. International attention has focused in recent years on improving observance of international standards relating to crew qualifications and crewing levels, safe shipboard operations, and ensuring that working and living conditions on board ship do not threaten the safety and health of the crew. There is now a greater focus on the human dimensions of accidents, particularly the effects of fatigue and other "fitness for duty" factors. Competency standards are required for deck and engineering officers and crews in line with Australia's desire to comply with the Maritime Labour Convention (MLC).

Although the Maritime Labour Convention (MLC) is not in force for Australia at the time this Bill is introduced into the Parliament, Australia has been largely compliant with MLC standards through a range of legislation including the 1912 Act, the *Occupational Health and Safety (Maritime Industry) Act 1993*, *Seafarers Rehabilitation and Compensation Act 1992* and the *Offshore Petroleum Act 2006*. The Bill seeks to ensure Australia continues to observe MLC standards.

Part 1—Preliminary

Clause 27 Simplified outline of this Chapter

This clause provides an outline of the chapter.

Part 2—Seafarer Certificates

This Part is concerned with the certificates of qualification and proficiencies for seafarers in Australia.

Division 1—Regulations relating to seafarer certificates

Clause 28 Regulations relating to seafarer certificates

This clause provides for regulations to govern the issue of seafarer certificates and give effect to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). The STCW Convention specifies the basic requirements for granting seafarer certificates including minimum age, health and fitness, basic experience and required examinations. Persons engaged to perform duties at sea must hold certificates to prove that they meet the prescribed standards. The convention also enables port state inspection of seafarer competency and minimum manning requirements and penalties for breaches of the conventions.

Clause 29 Particular matters that may be prescribed by regulations

Sub-clause (1) provides that the regulations may make provision for various classes of seafarer certificates and may specify that particular work on board a vessel or particular functions, require a particular certificate.

For example, a deck watchkeeper certificate of competency may be prescribed as a requirement for a person to perform navigational watch duties.

Sub-clause (2) sets out in more detail than clause 28 examples of the matters for which regulations under clause 28 may be made. These include criteria relating to the various levels of skills and competencies, standards, qualifications and experience necessary, as well as character attributes, minimum age, health and nationality, citizenship or residence requirements to be met by seafarers in order to be awarded seafarer certificates.

Sub-clause (3) provides that regulations under this clause may also make provision for how the attainment of the various skill levels by seafarers is to be evidenced, for the training and examination of seafarers, including practical experience at sea, and matters concerning the conduct of examination.

Division 2—Issue of seafarer certificates

Clause 30 Persons may apply for issue of a seafarer certificate;

This clause enables a person to apply to AMSA for a prescribed seafarer certificate in the way required by regulations.

Clause 31 Issue of seafarer certificate

Sub-clause (1) provides for the issue of a seafarer certificate by AMSA if the person applies in accordance with cl 30 and AMSA is satisfied that the requirements of the regulations are met.

Sub-clause (2) makes it clear that a certificate is subject to any conditions set out in the regulations and any additional conditions imposed by AMSA.

Clause 32 AMSA may vary seafarer certificates

Sub-clause (1) allows AMSA to vary a seafarer certificate issued under clause 31 if AMSA considers the criteria for variation set out in regulations are met.

Sub-clause (2) makes it clear that in varying a certificate, AMSA may impose a new condition, or vary or remove a condition on the certificate.

Clause 33 Revocation of seafarer certificates

This clause allows AMSA to revoke a seafarer certificate issued under clause 31 if AMSA considers the criteria for revocation set out in regulations are met.

Division 3—Offences and civil penalties relating to seafarer certificates

Clause 34 False representations about seafarer certificates

This clause creates a criminal offence, punishable by a maximum term of imprisonment for up to 5 years for a person who makes a false representation that they hold a seafarer certificate of a particular kind.

A civil penalty is available in the alternative.

Clause 35 Person performing duties or functions without a seafarer certificate

This clause creates a criminal offence, punishable by imprisonment for up to 5 years or a fine, for a person who works as a seafarer in a particular role without the certificate which the regulations specify as required in order to work in that role. An exceptional circumstance defence is available where a person, for example, reasonably believes that circumstances of sudden or extraordinary emergency exist and committing the offence is the only reasonable way to deal with the emergency.

Where a person relies on the exceptional circumstance defence, the evidential burden of proof is placed on the defendant, for example, it is for the defendant to satisfy the court of the exceptional circumstances. The reason for the defendant bearing the burden is because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

A civil penalty is available in the alternative.

Clause 36 Master causing etc. performance of duties or functions without a seafarer certificate

This clause creates a criminal offence, punishable by imprisonment for up to 5 years or a fine, for the master of a regulated Australian vessel who causes or permits a person to work as a seafarer in a particular role without the certificate which the regulations specify as required in order to work in that role. An exceptional circumstance defence is available where a person, for example, reasonably believes that circumstances of sudden or extraordinary emergency exist and committing the offence is the only reasonable way to deal with the emergency.

Where a person relies on the exceptional circumstance defence, the evidential burden of proof is placed on the defendant, for example it is for the defendant to satisfy the court that the exceptional circumstances. The reason for the defendant bearing the burden is because the

evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

A civil penalty is available in the alternative.

Clause 37 Breach of a condition of a seafarer certificate

This clause creates a criminal offence, punishable by imprisonment for up to 12 months or a fine, for the holder of a seafarer certificate who breaches a condition of that seafarer certificate.

A civil penalty is available in the alternative.

Clause 38 Master causing etc. breach of a condition of a seafarer certificate

This clause creates a criminal offence, punishable by imprisonment for up to 12 months or a fine, for the master of a regulated Australian vessel who causes or permits a seafarer who holds a seafarer certificate to breach a condition of that seafarer certificate.

A civil penalty is available in the alternative.

Clause 39 Failing to produce seafarer certificate

This clause makes it a criminal offence, punishable by imprisonment for up to 12 months or a fine, for the holder of a seafarer certificate who fails to ensure that the certificate is made available for inspection on request by AMSA, an inspector or a Customs officer.

A civil penalty is available in the alternative.

Clause 40 AMSA may require delivery of revoked certificates

Clause 40 enables AMSA to require the return to AMSA of a revoked seafarer certificate.

Part 3—Maritime labour certificates

Division 1—Vessels to which this Part applies

Clause 41 Vessels to which this Part applies

This clause restricts application of the Part to regulated Australian vessels only.

Division 2—Regulations relating to maritime labour certificates

Clause 42 Regulations relating to maritime labour certificates

Sub-clause (1) enables regulations to be made about maritime labour certificates. In addition, general clauses about the matters on which regulations may be made about certificates are included in Part 4 of Chapter 9 of the Bill.

Sub-clause (2) makes it clear that regulations may require certain classes of vessels to have certain maritime labour certificates generally or in particular circumstances set out in the regulations. These include certificates relating to the living and working conditions on board the vessel.

Division 3—Issue of maritime labour certificates

An issuing body under this part is defined in clause 14 of this Bill to be AMSA or a recognised organisation that has been prescribed by regulations.

Clause 43 Persons may apply for a maritime labour certificate

This clause enables a person to apply to an issuing body for a prescribed maritime labour certificate for a vessel as set out in regulations.

Clause 44 Issue of maritime labour certificates

Sub-clause (1) provides for the issue of a maritime labour certificate by an issuing body if the conditions for issue set out in the subsection are met.

Sub-clause (2) provides that a maritime labour certificate is subject to any conditions that are set out in regulations and any conditions that are imposed by the issuing body.

Clause 45 Issuing body may vary maritime labour certificates

Sub-clause (1) allows AMSA to vary a maritime labour certificate issued under clause 44 if the issuing body considers the criteria for variation set out in regulations are met.

Sub-clause (2) makes it clear that in varying a certificate, the issuing body may impose a new condition, or vary, or remove a condition on the certificate.

Clause 46 Revocation of maritime labour certificates

This clause allows an issuing body to revoke a seafarer certificate issued under clause 44 if they consider the criteria for revocation set out in regulations are met.

Division 4—Offences and civil penalties relating to taking a regulated Australian vessel to sea without a maritime labour certificate

Clause 47 Taking a regulated Australian vessel to sea without maritime labour certificate—owner

This clause creates a criminal offence, for an owner of a regulated Australian vessel to take, or cause or permit another person to take, a regulated Australian vessel to sea without there being in force a maritime labour certificate of a particular kind if the regulations require that vessel to have a maritime labour certificate of that kind.

A civil penalty is available in the alternative.

Clause 48 Taking a regulated Australian vessel to sea without maritime labour certificates—master

This clause creates a criminal offence, punishable by imprisonment for 12 months or a fine, for a master of a regulated Australian vessel to take, or cause or permit another person to take, a regulated Australian vessel to sea without there being in force a maritime labour certificate of a particular kind if the regulations require that vessel to have a maritime labour certificate of that kind.

A civil penalty is available in the alternative.

Clause 49 Obligation to notify alterations of regulated Australian vessels that relate to maritime labour certificates

Clause 49 creates a criminal offence, punishable by imprisonment for 12 months or a fine, for the owner or the master of a regulated Australian vessel to fail to notify AMSA and the relevant issuing body of any alterations to the vessel that may affect the maritime labour certificates required for the vessel.

A civil penalty is available in the alternative.

Part 4—Manning and engagement of seafarers

Division 1—Vessels to which this Part applies

Clause 50 Vessels to which this Part applies

Part 4 is concerned with rules that apply to the engagement of seafarers on regulated Australian vessels and the manning or ships complement requirements for regulated Australian vessels.

Division 2—Manning of vessels

Clause 51 Minimum complement of seafarers on vessels

Sub-clause (1) enables AMSA to determine the minimum ship complement requirements in relation to vessels and classes of vessels.

By determination, AMSA is able to declare the skill level of the master and the numbers and skill levels of officers and ratings/lower ranks.

For example, AMSA may determine that a particular class of vessel needs to have a master of a particular competence level evidenced by a particular seafarer certificate and a specified number of officers, as well as a specified number of seafarers with particular certificates.

Sub-clause (2) requires AMSA to have regard to the matters set out in the regulations in making such a determination.

Sub-clause (3) enables AMSA to make a determination made under sub-clause 51(1) to specify, in relation to a vessel or a class of vessels, a different minimum complement for different voyages, cargoes, operations and whether the vessel is in port or at sea.

Sub-clause (4) provides that a determination made under this clause may specify conditions.

Sub-clause (5) makes it clear that a vessel may be subject to several determinations under this clause.

Sub-clause (6) provides that a declaration under sub-clause (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This is because this clause is merely declaratory of the law and is included to assist readers. It does not amount to an exemption from the *Legislative Instruments Act 2003*.

Clause 52 Operating a vessel other than in accordance with determination

This clause creates a criminal offence if the master of a vessel operates the vessel or is responsible for, or allows, another person to operate the vessel in contravention of a determination issued under clause 51.

A civil penalty is available in the alternative.

Clause 53 Owner or master to give details of complement of vessel’s seafarers

This clause creates a criminal offence if the owner or master fails to provide to AMSA, when required by AMSA, the details of the vessel’s complement, and of any changes in the complement, as are set out in the regulations.

A civil penalty is available in the alternative.

Division 3—Engagement of seafarers

Clause 54 Work agreements

Clause (1) creates a criminal offence if the master of a vessel takes the vessel to sea, or is responsible for, or allows, another person to take the vessel to sea, without a work agreement that complies with the regulations in place for seafarers on board the vessel.

A civil penalty is available in the alternative.

Clause (2) creates a criminal offence if the owner of a vessel takes the vessel to sea, or is responsible for, or allows, another person to take the vessel to sea, without a work agreement that complies with the regulations in place for seafarers on board the vessel.

A civil penalty is available in the alternative.

Clause (5) enables regulations to be made about work agreements. Examples of matters on which regulations may be made under this clause are

- (a) the content and form of work agreements;
- (b) the rights of seafarers to review and seek advice about a work agreement before signing it;
- (c) the process for signing work agreements;
- (d) the information or documents to be provided to seafarers about a work agreement and how that information or documents are to be provided;
- (e) the termination of work agreements;
- (f) keeping appropriate records; and
- (g) specifying a port as the home port of a seafarer.

Part VA of the *Shipping Registration Act 1981* contains additional requirements relating to work agreements for seafarers working on board a vessel engaging in international trading, where that vessel is registered on the Australian International Shipping Register under that Act.

Clause 55 Owner to make available information about conditions of employment

This clause enables regulations to be made that, separately to the work agreement, require shipowners to make available information about seafarers’ conditions of employment and the way in which the information should be provided.

Clause 56 Offences and civil penalties relating to content of work agreements

This clause creates a criminal offence if a person fraudulently alters, makes a false entry or provides a false copy of a work agreement.

A civil penalty is available in the alternative.

Clause 57 Regulations about records of service

This clause enables regulations to be made relating to keeping, retaining and producing records of service of seafarers. This clause modernises requirements in the 1912 Act which require articles of agreement to be kept in order to prove sea service. Sea service is a trigger for a number of employment and qualification points whereby seafarers can progress in seniority or pay scale.

Clause 58 Regulations about hours of work and rest

Clause 58 enables the regulation to be made about the hours of work and rest by seafarers.

Clause 59 Regulations about payment of wages

Sub-clause (1) is a general regulation making power for regulations to be made about payment of wages.

Sub-clause (2) provides a list of matters for which regulations may make provision. These matters do not limit the matters for which regulations may be made under sub-clause (1). They include the frequency and method of paying wages,; permitted deductions,; payslips,; payments to third parties out of wages with the consent of the seafarer,; charges for making such payments and wages entitlements of seafarers left at a port for reasons of illness or injury.

Part 5—Health, accommodation and welfare

This Part is concerned with the standards on board vessels to ensure the welfare and living conditions of seafarers.

Division 1—Application**Clause 60 Vessels to which this Part applies**

This clause applies Part 5 to regulated Australian vessels and foreign vessels. Clause 9 limits the application of offence clauses in this Division in respect of foreign vessels.

Division 2—Provisions

These clauses enable the making of regulations They also specify the provision of free provisions to seafarers; ensure that vessels are carrying drinking water and food of suitable quality and that adequate catering facilities are provided on vessels. Specific offences against these clauses are also included.

Clause 61 Regulations about provision of food and water

Sub-clause (1) enables regulations to be made about the provision of food and drinking water aboard a vessel.

Sub-clause (2) provides that regulations may be made about the quantity and quality of these essential stores to be both carried and made available on board vessels and mechanisms for dealing with complaints about them.

Clause 62 Free provisions

This clause creates a criminal offence if the owner of a vessel fails to make available provisions to seafarers aboard the vessel without charge.

Clause 63 Provisions adequate for voyage

This clause requires the master of a vessel to ensure that the vessel does not go to sea without adequate food and drinking water of suitable quality and quantity for the voyage. A variety of food of appropriate nutritional value is required.

The cultural and religious backgrounds of the seafarers undertaking the voyage must be taken into account in provisioning a vessel for a voyage.

It is a criminal offence if the master fails to comply with these requirements.

Clause 64 Adequate food catering facilities to be provided

This clause requires the owner of a vessel to ensure that the vessel has adequate catering facilities on board for the preparation and service of proper meals to the seafarers.

It is a criminal offence if the owner fails to comply with these requirements.

Division 3—Health

Clause 65 Regulations about health

Sub-clause (1) enables the making of regulations on the subject matter of the health of seafarers.

Sub-clause (2) sets out a list of matters which regulations under sub-clause (1) may cover but this list does not limit the general regulation making in sub-clause (1). The list allows, for example, for regulations to be made about the appointment of medical inspectors, medical examinations of seafarers and prospective seafarers, certificates of fitness for engagement as a seafarer, and the inspection of medicines and surgical stores on board ships.

Clause 66 Medicines etc. to be carried on vessels—owner

This clause creates a criminal offence for an owner to take a vessel to sea, or to allow or cause the vessel to go to sea without medical stores and instructions for dispensing them as specified in the regulations.

A civil penalty is available in the alternative.

Clause 67 Medicines etc. must be carried on vessels—master

This clause creates a criminal offence for a master to take a vessel to sea, or to allow or causes the vessel to go to sea without medical stores and instructions for dispensing them as specified in the regulations.

A civil penalty is available in the alternative.

Clause 68 Owner liable for medical attendance etc.

This clause imposes obligations on the owner of a vessel on which a seafarer works in relation to medical and dental expenses for that seafarer.

Sub-clause (1) provides that the obligation under this clause applies whenever a seafarer is not in their home port, and is hurt, sick, or injured or requires essential dental care provided that, in the case of illness, the illness was not due to some deliberate act or misbehaviour by the seafarer.

Sub-clause (2) sets out the expenses which are to be met by the owner of the vessel where this clause applies. These are the costs of;

- providing necessary surgical and medical advice and attention, and medicine,
- maintaining the seafarer,
- until the seafarer is cured, or dies, or returns to his or her home port;
- transporting the seafarer to that port; and
- burial costs if the seafarer dies before returning to his or her home port; or
- the cost of transporting the seafarer's body if the family of the seafarer asks for the body to be transported there.

Clause 69 Owner liable where certain seafarers removed from vessel etc.

Sub-clause (1) imposes obligations on the owner of a vessel on which a seafarer works in relation to medical and dental expenses for that seafarer where the seafarer is sick or requires essential dental care and is temporarily removed from the vessel to prevent infection or for the vessel's convenience.

Sub-clause (2) sets out the expenses which are to be met by the owner of the vessel where this clause applies. These are the costs of

- removing the seafarer from the vessel, and
- returning the seafarer to the vessel, and
- providing necessary surgical and medical advice and attention, essential dental care and medicine while the seafarer is not on board the vessel, and
- maintaining the seafarer while he or she is not on board.

Clause 70 Owner liable for medical attendance etc on board vessel

This clause imposes obligations on the owner of a vessel on which a seafarer works to pay the expenses of all medicine, all surgical and medical advice and attention and essential dental care provided to a seafarer while on board a vessel

Clause 71 Other expenses to be paid by seafarer

This clause makes it clear that if the owner of a vessel pays for expenses in relation to the illness or burial of a seafarer who works or worked on the vessel, other than the expenses described at clauses 68, 69 and 70, the owner may recover these from the seafarer or the seafarer's estate to the extent to which they are reasonable expenses.

Clauses 72 Medical practitioners and first aid attendants—owner

Sub-clause (1) requires the owner of a vessel that has 100 or more persons on board to ensure that a qualified medical practitioner is on board the vessel, as part of the ship's complement, for any overseas voyage or for any voyage between two consecutive ports greater than the distance set out in the regulations.

Sub-clause (2) requires the owner of a vessel that has between 10 and 100 persons on board to ensure that one of its complement is qualified to give first aid unless a qualified medical practitioner forms part of the complement. This requirement applies if the vessel proceeds on an overseas voyage or any voyage between two consecutive ports greater than the distance set out in the regulations.

The owner is subject to a criminal penalty for non compliance with the provisions of this clause and a civil penalty is available in the alternative.

Clause 73 Medical practitioners and first-aid attendants—master

Sub-clause (1) requires the master of a vessel that has 100 or more persons on board to ensure that a qualified medical practitioner is on board the vessel, as part of the ship's complement, for any overseas voyage or for any voyage between two consecutive ports greater than the distance set out in the regulations.

Sub-clause (2) requires the master of a vessel that has between 10 and 100 persons on board to ensure that one of its complement is qualified to give first aid unless a qualified medical practitioner forms part of the complement.

This requirement applies if the vessel proceeds on an overseas voyage or any voyage between two consecutive ports greater than the distance set out in the regulations.

The master is subject to a criminal penalty for non compliance with the provisions of this clause and a civil penalty is available in the alternative.

Division 4—Accommodation

Clause 74 Regulations relating to accommodation

Sub-clause (1) enables the making of regulations on the subject matter of the accommodation to be provided on board vessels for seafarers.

Sub-clause (2) sets out a list of matters which regulations under sub-clause (1) may cover but this list does not limit the general regulation making in sub-clause (1). The list allows, for example, for regulations to be made about the minimum space for each seafarer, the maximum numbers of seafarers who can be accommodated in particular parts of a vessel, maximum levels of noise and vibration allowed for accommodation areas on board, as well as the location, construction standards, furnishing, ventilation, heating and lighting, maintenance, using living quarters for other purposes, the provision of hot and cold water, bedding, and other items for personal use.

Sub-clause (3) enables regulations to address the ventilation requirements for machinery and boiler spaces and for the provision of wheelhouses.

Clause 75 Vessels not to go to sea without required accommodation

This clause creates a criminal offence for an owner of a vessel to take, or cause or permit a vessel to be taken to sea without the accommodation requirements set out in regulations made under sub-clause (1).

A civil penalty is available in the alternative.

Division 5—Repatriation and protection

Clause 76 Regulations relating to repatriation

Sub-clause (1) enables regulations to provide for the repatriation of a seafarer at no cost to the seafarer. Repatriation in the maritime context means the seafarer should be returned to their home port as defined in the Bill.

Sub-clause (2) sets out a list of matters which regulations under sub-clause (1) may cover but this list does not limit the general regulation making power in sub-clause (1).

The list allows, for example, for regulations to be made setting out the circumstances in which a seafarer is entitled to repatriation, for example, on the termination of the seafarer's work agreement, inability to perform their duties, injury or illness of the seafarer and disposal or wreck of a vessel. The regulations may also provide for such matters as the liability for repatriation, recovery of costs, how repatriation should take place, and repatriation destinations.

Clause 77 Regulations relating to protection of seafarers

This clause enables regulations to be made about matters relating to their employment on which a seafarer is to have leave to go ashore, including dealing with complaints onshore and to conduct legal proceedings arising from his or her employment.

Part 6—Alcohol and drugs

This part details the powers for the drug and alcohol testing of seafarers and pilots. It set out the process for undertaking tests and creates offences related to drug and alcohol testing. This part is consistent with current standards for drug and alcohol testing and international requirements in the International Convention of Standards for Training, Certification and Watchkeeping.

Division 1— Alcohol and drug testing of seafarers and pilots

Clauses 78 Seafarer or licensed pilot may be required to undergo alcohol test

This clause enables AMSA to require a seafarer or licensed pilot on board a regulated Australian vessel or a foreign vessel to undergo an alcohol test as set out in regulations to determine the blood-alcohol level of the seafarer or pilot.

Clause 79 Seafarer or licensed pilot may be required to undergo drug tests etc.

This clause enables AMSA to require a seafarer or licensed pilot on board a regulated Australian vessel or a foreign vessel to undergo a drug test as set out in regulations to determine the presence or levels of drugs in the blood of the seafarer or pilot.

Clause 80 Limitation on exercise of powers in relation to foreign vessels

This clause limits the powers in clauses 78 and 79 in respect of seafarers and licensed pilots on foreign vessels consistent with the geographical application of offences to foreign vessels in clause 9 of the Bill.

Clause 81 Refusal to undergo alcohol or drug test

This clause creates a criminal offence if a person fails to take an alcohol or drug test if the person is requested to do so under one of the previous clauses.

A civil penalty is available in the alternative.

Clause 82 Information to be provided after test

This clause requires the person who conducted the drug or alcohol test to provide to the seafarer or the licensed pilot as soon as practicable after the test, a written statement specifying the result of the test and the date and time of the test.

Division 2—Offences and civil penalties relating to alcohol and drugs

Clause 83 Impairment of person’s capacity to carry out duties as seafarer or pilot

This clause creates a criminal offence if a seafarer or licensed pilot is on board a regulated Australian vessel or a foreign vessel and is under the influence of alcohol or any other drug to the extent that their capacity to carry out their duties is impaired.

The offence applies in respect of illegal drugs as well as prescribed and non-prescribed medications.

Clause 84 Unacceptable blood alcohol level—seafarers and pilots

This clause creates an offence for a seafarer or licensed pilot on board a regulated Australian vessel or a foreign vessel to have a blood alcohol level that is at the level set out in the regulations or higher.

This offence is a strict liability offence.

Clause 85 Prescribed drugs: seafarers and pilots

This clause creates an offence for a seafarer or licensed pilot on board a regulated Australian vessel or a foreign vessel to have a prescribed drug present in their bloodstream.

This offence is a strict liability offence.

Clause 86 Permitting or requiring performance of duties by impaired person

Clause 86 creates an offence for the owner or master of a regulated Australian vessel or a foreign vessel to either require or allow a seafarer or pilot to perform duties on board the vessel if the owner or master, as the case may be, knows that the seafarer's capacity or the pilot's capacity to perform their duties is impaired through alcohol or drugs.

The offence applies in respect of illegal drugs as well as prescribed and non-prescribed medications.

This offence is a strict liability offence.

Division 3—Regulations and other matters

Clause 87 Regulations relating to alcohol and drug tests

This clause enables the making of regulations about specified matters that relate to drug and alcohol tests. Regulations may be made about authorising persons to conduct tests and to operate drug-testing and alcohol-testing devices. Regulations may also provide for the conduct of tests, random and otherwise, the devices used in conducting the tests and the calibration and testing of those devices, the approval of persons to conduct analyses of tests, procedures for handling and analysing samples, confidentiality provisions and the storage and destruction of samples.

Clause 88 Evidentiary certificates

Clause (1) provides that a person who conducts a test under this Part may issue a certificate certifying that they have conducted a test on a named person, the steps taken in the conduct of the test, and that the person was given the written statement referred to in clause 82 in relation to the test.

Clause (2) provides that a certificate issued under sub-clause (1) is evidence of the matters stated in the certificate. This evidence of the content of the certificate can be challenged in a court.

Clause (3) provides that a document purporting to be a certificate issued under sub-clause (1) must be taken to be a properly issued certificate. This is not irrefutable and evidence may be led that that document is not such a certificate.

Clause (4) provides that, at least 14 days before a certificate can be admitted as evidence in proceedings for a prosecution or for a civil penalty, the person against whom the proceedings have been instituted must be provided with a copy of the certificate and notice that it is intended to produce the certificate in evidence in the proceedings.

Part 7—General matters relating to seafarers of regulated Australian vessels and foreign vessels

Clause 89 Exemption from serving on jury

This clause exempts seafarers as defined in this Bill from jury service.

Clause 90 Seafarer not to be wrongfully left behind

This clause creates a criminal offence if a person forces a seafarer of a regulated Australian vessel or a foreign vessel ashore, and leaves the seafarer behind when the vessel departs or proceeds on its voyage. A separate offence applies where a person otherwise leaves a seafarer behind whether ashore or at sea.

A civil penalty is available in the alternative.

Clause 91 Regulations may make provision in relation to property of deceased seafarers

This clause enables regulations to be made to deal with the property of deceased seafarers.

Clause 92 Expenses of returning foreign seafarers left behind

This clause enables the Commonwealth to recover as a debt from the owner, agent, or master of a vessel any expenses incurred by the Commonwealth in sending a foreign seafarer of that vessel, his or her property, or, if he or she has died, his or her body outside Australia.

Clause 93 Owner of vessel not entitled to limit liability in respect of certain claims

This clause prevents shipowners limiting their liability in respect of certain claims (loss of life, personal injury and damage to property) by an employee, engaged in connection with the vessel and their heirs and dependents. This clause gives effect to Art 3(e) of the Limitation of Liability for Maritime Claims Convention 1976 and is included in Chapter 2 of the Bill because it concerns seafarers and their rights. The Convention is otherwise implemented by the *Limitation of Liability for Maritime Claims Act 1989*.

Clause 94 Employment of seafarers in loading and unloading

This clause creates a criminal offence if a person uses seafarers to load and unload cargo from a regulated Australian vessel or a foreign vessel at a port in Australia unless there is insufficient labour available on shore or the regulations set out requirements for the employment of seafarers in loading or unloading in these circumstances and those requirements are complied with.

A civil penalty is available in the alternative.

Clause 95 Copy of this Act to be kept on regulated Australian vessels

Sub-clause (1) and (2) creates a criminal offence if the master of a regulated Australian vessel fails to provide seafarers on the vessel with access at all reasonable times to a copy of this Bill. Access may be provided electronically.

Sub-clause (3) makes it clear that regulations and other instruments made under the Bill are not required to be made available.

Sub-clause (4) allows regulations to be made which require the master of a regulated Australian vessel to provide, including electronically, seafarers working on the vessel with copies of legislative materials made under the Act.

Chapter 3—Vessel Safety

Part 1—Preliminary

All vessels used for the international carriage of freight and passengers need to be able to demonstrate that they are fit for the purpose of ocean travel. Three conventions developed by the IMO: SOLAS, the Load Line Convention and MARPOL, specify standards for ship design, construction, operation and maintenance. These require each convention signatory that registers vessels and permits them to fly their flags to ensure that those ships are issued with and maintain certificates to confirm that they meet the conventions' requirements. "Flag States" are required to have a system of inspection and survey of their flagged ships to ensure that the required standards are met before their certification. Inspection can be undertaken by officers of the Flag State Administration, nominated surveyors or organisations recognised by the Flag State.

The International Conventions also provide for signatories to ensure that foreign vessels visiting their ports do not pose an unreasonable threat to the safety of the ship, its crew or the marine environment while in their ports and in waters within their jurisdiction. The control exercised by all states over foreign vessels in their waters is known as "port State" control (PSC).

Australian ships arriving in foreign ports are subject to that country's' PSC regime, and risk detention if they cannot demonstrate their compliance. Similarly, foreign flagged ships operating into Australia are required to demonstrate that they meet international standards for safety and environmental protection.

The SOLAS convention includes detailed requirements in relation to stability, machinery, fire protection and fire equipment, life saving appliances, radio equipment including satellite distress communication systems, and carriage of particular cargoes including dangerous goods. It also includes general requirements for ship construction, machinery and electrical equipment.

The Load Line Convention details requirements for determining load lines, including details of marking and verification of marks, conditions of assignment of freeboard, freeboard tables and corrections, special provisions for ships intended for the carriage of timber and the prescribed form of International Load Line Certificates. It also makes provision for the potential hazards present in different zones and different seasons.

MARPOL convention, requirements for which are detailed with in Chapter 4, deals with the standard of construction and equipment of ships and with ship operational practices in relation to preventing intentional pollution from disposal of oil, noxious liquids, harmful packaged substances and garbage.

In the main, Australian statutory requirements align with those prescribed in international maritime conventions, although in a few instances standards reflect particular Australian requirements. These standards restrict the ability of an owner or operator of a ship of lesser standards to participate in the industry.

Clause 96 Simplified outline of this Chapter

This clause describes in a convenient form, the contents of this Chapter, indicating its application to both regulated Australian and foreign vessels (consistent with the conventions mentioned above), the requirement for safety certificates and the offences created for failing to have them when taking a vessel to sea; it creates the offences for taking an unseaworthy vessel to sea, provides for the regulation of loading and unloading vessels and regulates the carriage of dangerous goods.

Part 2—Certification

Division 1—Vessels to which Part applies

Clause 97 Vessels to which this Part applies

This clause applies Part 2 of this Chapter to regulated Australian vessels and foreign vessels.

Division 2—Regulations relating to safety certificates

Clause 98 Regulations relating to safety certificates

Sub-clause (1) enables the making of regulations about safety certificates.

Sub-clause (2) provides that those regulations may give effect to the International Convention for the Safety of Life at Sea 1974 and the International Convention on Load Lines 1966. The regulations about safety are not limited to giving effect to those Conventions.

Sub-clause (3) provides that the regulations may specify different safety certificates for different kinds of vessels, in particular circumstances or generally. Safety certificates may relate to a range of matters including:

- (a) survey;
- (b) construction;
- (c) machinery and equipment;
- (d) other matters relating to the safety of vessels

The safety certification regime is the basis for vessel safety systems internationally and a key part of the port State control inspection process. The required safety certificates will remain unchanged from the 1912 Act.

Division 3—Issue of safety certificates

Clause 99 Persons may apply for a safety certificate

Sub-clause (1) provides that a person may apply to an issuing body for a safety certificate for a regulated Australian vessel.

Sub-clause (2) provides that an application must comply with any requirements in the regulations.

Clause 100 Issue of safety certificate

This clause provides for the issue by the issuing body of a safety certificate in relation to a regulated Australian vessel if there is a valid application and the issuing body is satisfied that the criteria prescribed by the regulations are met.

A safety certificate may be issued subject to conditions. Sub-clause 100(2) provides that the regulations may prescribe conditions to which a safety certificate is subject. In addition, the issuing body may impose conditions on the safety certificate.

Clause 101 Issuing body may vary safety certificate

Sub-clause (1) provides that an issuing body may vary a safety certificate if satisfied that the criteria prescribed by the regulations are met. Clause 316 makes it clear that an issuing body that is not AMSA may only vary a safety certificate originally issued by it.

Sub-clause (2) provides that a variation to a certificate may include imposing, varying or removing a condition on the certificate.

Clause 102 Revocation of safety certificate

This clause allows an issuing body to revoke a safety certificate if it is satisfied that the relevant criteria set out in the regulations are met.

Division 4—Offences and civil penalties relating to taking a regulated Australian vessel to sea without safety certificates

There are a number of offences in the Bill attracting substantial penalties for breaches. The proposed penalties are commensurate with the focus of this legislation which is, in the main, promotion of safety of life at sea and protection of the marine environment.

Clause 103 Taking a regulated Australian vessel to sea without safety certificates—owner

This clause creates a criminal offence for the owner of a regulated Australian vessel that is required by the regulations to have a safety certificate of a specified kind, to take the vessel to sea, or to cause or permit the vessel to be taken to sea without the relevant safety certificate in force.

A civil penalty is available in the alternative.

The penalties are intended to act as a deterrent, given the potential environmental harm and / or loss of life non-compliance could cause.

Clause 104 Taking a regulated Australian vessel to sea without safety certificates—master

This clause creates a criminal offence for the master of a regulated Australian vessel that is required by the regulations to have a safety certificate of a specified kind, to take the vessel to sea, or to cause or permit the vessel to be taken to sea without the relevant safety certificate in force.

A civil penalty is available in the alternative.

The penalties are intended to act as a deterrent, given the potential environmental harm and / or loss of life non-compliance could cause.

Clause 105 Obligation to notify alterations of regulated Australian vessels that relate to safety certificates

This clause creates a criminal offence by the owner or master of a regulated Australian vessel where the vessel is altered so as to affect the safety certificates that it should have and both AMSA and any other issuing body or bodies that have issued safety certificates for the vessel are not informed of the alterations within a period provided for in the regulations.

A civil penalty is available in the alternative.

Division 5—Offences and civil penalties relating to taking foreign vessels to sea without appropriate documents

Clause 106 Taking a foreign vessel without appropriate documents—owner

This clause creates a criminal offence for the owner of a foreign vessel that is required by the regulations to have a certificate of a particular kind, to take the vessel to sea, or to cause or permit the vessel to be taken to sea without the relevant safety certificate in force. If there is no requirement in the regulations for the vessel to have a particular certificate, the owner commits an offence if there is not some other documentary evidence of the seaworthiness of the vessel.

A civil penalty is available in the alternative.

The penalties are intended to act as a deterrent, given the potential environmental harm and / or loss of life non-compliance could cause.

Clause 107 Taking a foreign vessel to sea without appropriate documents—master

This clause creates a criminal offence for the master of a foreign vessel that is required by the regulations to have a safety certificate of a particular kind to take the vessel to sea, or to cause or permit the vessel to be taken to sea without the relevant safety certificate in force. If there is no requirement in the regulations for the vessel to have a particular certificate, the master commits an offence if there is not some other documentary evidence of the seaworthiness of the vessel.

A civil penalty is available in the alternative.

The penalties are intended to act as a deterrent, given the potential environmental harm and / or loss of life non-compliance could cause.

Part 3—Seaworthiness of vessels

Clause 108 Vessels to which this Part applies

This clause applies Part 3 to both regulated Australian vessels and foreign vessels.

Clause 109 Taking unseaworthy vessel to sea—owner

This clause creates a criminal offence for the owner of a regulated Australian vessel or a foreign vessel to take the vessel to sea or to allow it to be taken to sea, at any time when the vessel is not seaworthy.

A civil penalty is available in the alternative.

The penalties are intended to act as a deterrent, given the potential environmental harm and / or loss of life non-compliance could cause.

Clause 110 Taking unseaworthy vessel to sea—master

This clause creates a criminal offence for the master of a regulated Australian vessel or a foreign vessel to take the vessel to sea or to allow it to be taken to sea, at any time when the vessel is not seaworthy.

A civil penalty is available in the alternative.

The penalties are intended to act as a deterrent, given the potential environmental harm and / or loss of life non-compliance could cause.

Part 4—Passenger and cargo operations and overloading

Division 1—Vessels to which this Part applies

Clause 111 Vessels to which this Part applies

This clause specifies that Part 4 of this Chapter applies to both regulated Australian vessels and foreign vessels.

Division 2—Regulations relating to passenger and cargo operations

Clause 112 Regulations relating passenger and cargo operations

Sub-clause (1) is a broad regulation making power on the subject of the carriage of passengers.

Sub-clause (2) sets out some specific matters on which regulations may be made relating to passengers. Regulations may be made about particular equipment to be carried on vessels which carry passengers, such as gangways, limits on the numbers of passengers that can be carried in any part of the vessel, minimum requirements for accommodation for passengers, food, water and other essential stores, sanitation and discipline. Regulations may also cover matters relating to medical staff on board, any medical inspections that might be necessary, medical and surgical stores, such as first aid stores, and hospital accommodation.

Regulations may also specify requirements about passenger lists. This list of matters does not derogate from the broad power in sub-clause (1).

Sub-clause (3) permits the making of regulations to provide for the obligations of the owner and the master where a vessel is wrecked or stranded or unable to complete its voyage and for the landing of passengers at a port other than that named in their contract of carriage as their port of destination.

Sub-clause (4) is a broad general regulation making power on the subject of the carriage of cargo and livestock.

Sub-clause (5) sets out some specific matters on which regulations about cargo and livestock may be made. Regulations may be made about how cargo and livestock is to be stowed or penned on board, carried, and loaded and unloaded.

The regulations may set out rules about what constitutes an overloaded vessel and may provide for notices to be given in relation to any of the matters listed in the sub-clause.

Sub-clause (6) is a broad general regulation making power on the subject of dangerous goods. Dangerous goods are those listed in the International Maritime Dangerous Goods Code, published by the International Maritime Organisation.

Sub-clause (7) sets out some specific matters on which regulations about dangerous goods may be made. Regulations may make provision for dangerous goods to only be carried on specified classes of vessels, and may limit the quantities of dangerous goods that may be carried on a vessel out of an Australian port. Regulations may also specify particular precautionary measures to be taken in loading and unloading as well as the conditions for their packing and stowing onboard and for the ventilation of holds in respect of dangerous goods loaded at an Australian port.

Division 3—Regulations relating to overloading

Clause 113 Regulations relating to overloading

This clause enables the making of regulations about when a vessel is overloaded and the giving of notices in relation to overloading of a vessel.

Division 4—Offences and civil penalties relating to passenger and cargo operations

Subdivision A—Loading

Clause 114 Proper precautions in loading a vessel

Sub-clause (1) creates a criminal offence for persons who pack, send, stow, load, unload, secure or carry cargo, livestock and ships' stores on a regulated Australian vessel or a foreign vessel in certain circumstances. First a person involved in any of these activities will commit an offence if they do not do what they reasonably can to ensure that the activity is done without damaging the vessel or the environment, or risking the safety of any person. Secondly, they must comply with any procedures set out in the ship's safety management system that are necessary to ensure the activity is done safely.

Sub-clause (2) provides that, in addition, the owner of a vessel will commit a criminal offence if they do not implement and maintain a safety management system that ensures these activities are carried out so that they do not damage the vessel or the environment or risk the safety of any person.

In the case of a foreign vessel, a person does not commit this offence unless the vessel is in an Australian port, entering or leaving an Australian port, in internal waters of Australia or in the territorial sea other than in the course of innocent passage. When a vessel is in the course of innocent passage in this context is set out in UNCLOS.

A civil penalty is available in the alternative.

Subdivision B—Dangerous goods

Clause 115 Carrying improperly labelled dangerous goods on a vessel

This clause creates an offence and also a civil penalty for anyone taking dangerous goods on board, or allowing them to be placed on board, a regulated Australian vessel or a foreign vessel if the outside of the package containing the goods is not distinctly marked with a correct description of the goods.

‘Dangerous goods’ is defined in subclause 14(1) as goods listed in the International Maritime Dangerous Goods Code.

The clause limits jurisdiction over foreign vessels in line with the limits of a coastal State’s powers under UNCLOS.

Clause 116 Requirement to give a description to master or owner of dangerous goods on a vessel

This clause places an additional obligation on the shipper, or someone on their behalf, to create a description in writing of the dangerous goods, additional to the description contained in the ordinary shipping documents, for the master or owner of the vessel; and an offence and civil penalty for failure to provide that additional advice at or before the time the goods are placed on board the vessel.

The clause limits jurisdiction over foreign vessels in line with the limits of a coastal State’s powers under UNCLOS.

Clause 117 Carrying etc dangerous goods under a false description

This clause creates an offence and civil penalty for anyone who takes dangerous goods on board a regulated Australian vessel or a foreign vessel under a false description, or causes or permits that to happen.

The clause limits jurisdiction over foreign vessels in line with the limits of a coastal State’s powers under UNCLOS.

Clause 118 Falsely describing the sender of dangerous goods

This clause creates an offence and civil penalty for falsely describing the sender of dangerous goods in a material way.

Clause 119 Notice of intention to ship

This clause creates an obligation, and an offence and civil penalty for failing to comply, where the shipper of the dangerous goods does not give notice of their intention in the manner and to the person prescribed before they are shipped in a regulated Australian vessel or a foreign vessel.

Clause 120 Powers of owner or master as to dangerous goods

This clause confers a power on the owner or master of a vessel to refuse any dangerous goods or open and inspect a package suspected of containing dangerous goods. An owner or master of a vessel will not be liable in any way for using such a power.

Subdivision C—Other offences**Clause 121 Obstructing vessel or machinery**

This clause creates an offence and civil penalty for any passengers or others who obstruct any part of the machinery or equipment aboard a vessel or obstruct, hinder or harm a seafarer aboard the vessel.

Clause 122 Certain persons may be refused entry to or asked to leave a vessel

This clause allows the owner or master of a vessel, or their agent, to refuse entry to someone or ask them to leave if they are drunk or disorderly or otherwise causing annoyance or injury to other passengers. It is an offence to board a vessel, or remain on a vessel, after being so refused or asked to leave.

Clause 123 Powers of master etc to detain

This clause enables the master to detain someone contravening clause 122 if they reasonably believe the clause has been contravened and to ask others to assist. They must as soon as practicable hand over the responsibility to a constable. Constable is defined in subclause 14(1) as having the meaning given by section 3 of the *Crimes Act 1914*.

Part 5—Musters and drills**Division 1—Vessels to which this Part applies****Clause 124 Vessels to which this Part applies**

Part 5 of this Chapter applies to regulated Australian vessels and foreign vessels as well as domestic commercial vessels and recreational vessels. However, to the extent that a clause in this Part gives effect to an obligation in one of the international conventions listed at clause 12, the clause will not apply to a domestic commercial vessel or a recreational vessel if the National Law implements the obligation and applies to the vessel or, if a State or Territory law implements the obligation and applies to the vessel. In effect, this clause, when read with clause 12, applies Commonwealth law to all vessels if they are not otherwise covered by a clause of the National Law, or a State or Territory law related to musters drill and tests aboard the vessel.

Division 2—Regulations relating to musters, drills and tests**Clause 125 Regulations relating to musters, drills and tests**

This clause provides for regulations to be made in relation to musters, drills, checks of machinery and equipment and other tests, including boat drills and collision drills as well as safety training. It also allows regulations to provide for entries to be made in the official log on these matters, among other things.

Division 3—Offences and civil penalties relating to musters, drills and tests

Clause 126 Musters and drills etc. on vessels

This clause imposes an obligation to ensure that musters, and boat drills, fire drills, collision drills and other prescribed drills are held in accordance with the regulations and creates an offence and civil penalty for a master of a regulated Australian Vessel or a foreign vessel who does not.

The obligation also requires the creation and implementation of a safety management system to ensure that safety training and familiarisation are held and recorded in the official log book.

Clause 127 Machinery and equipment checks and tests on vessels

This clause imposes an obligation on the master of an Australian Regulated Vessel or a foreign vessel to conduct machinery and equipment checks and tests of the machinery of the vessel as part of a safety management system and for the official log book to record such checks or failure to make them. The clause also creates an offence and civil penalty for failure to meet the obligation.

Chapter 4—Prevention of pollution

Part 1—Preliminary

As outlined at the commencement of Chapter 3, the safety of a vessel, and consequent protection of the marine environment, depends on a range of factors covering the vessel itself and its operation. These factors arise from the vessel and its equipment, the competence of the crew, the nature of the cargo, and the professionalism of a vessel's navigation. The purpose of marine pollution regulation is to ensure the protection of the marine environment from shipping-related pollution incidents.

The MARPOL convention deals with the standard of construction and equipment of ships and with ship operational practices in relation to preventing pollution from disposal of oil, noxious liquids, harmful packaged substances and garbage.

Ships which do not comply with appropriate standards for vessel safety and seafarer competence pose a substantial risk to life, property and the environment. Pollution damage from shipping incidents can also adversely affect other marine based industries. The cost to industry of compliance with these regulations needs to be weighed against the potential damage to the environment and the costs to the community of rectification in the event of a shipping incident.

Clause 128 Simplified outline of this Chapter

This clause outlines the content of this chapter and indicates that it provides for pollution certificates and creates offences and civil penalties for taking regulated Australian and certain other vessels to sea without certificates. It also enables directions to be given to foreign vessels in line with the Prevention of Pollution Convention.

Part 2—Pollution certificates

Division 1—Vessels to which this Part applies

Clause 129 Vessels to which this Part applies

Part 2 of this Chapter applies to regulated Australian vessels and foreign vessels as well as domestic commercial vessels and to Australian recreational vessels. However, to the extent that a clause of this Part gives effect to an obligation in the Prevention of Pollution Convention (MARPOL), the clause will not apply to a domestic commercial vessel or a recreational vessel if the National Law implements the obligation and applies to the vessel or, if a State or Territory law implements the obligation and applies to the vessel. In effect, this clause, when read with clause 12, applies the clauses of this Part to all vessels if they are not otherwise covered by a clause of the National Law or a State or Territory law related to pollution certificates.

Division 2—Regulations relating to pollution certificates

Clause 130 Regulations relating to pollution certificates

This clause creates a regulation making power in relation to pollution certificates for Australian regulated vessels covering vessel construction, carriage of noxious liquids and packaged harmful substances, sewage, air pollution and energy efficiency; and to give effect to the Prevention of Pollution Convention.

Division 3—Issue of pollution certificates

An issuing body under this division is defined in subclause 14(1) of this Bill as AMSA or a recognised organisation that has been prescribed by Regulations.

Clause 131 Persons may apply for issue of a pollution certificate

This clause provides for the application to an issuing body for a pollution certificate for a vessel, in accordance with the regulations.

Clause 132 Issue of pollution certificate

This clause provides for the issuing body to issue a certificate if it is satisfied that the regulatory criteria have been met and any conditions imposed by the issuing body including those relating to vessel safety standards. Pollution certificates will be subject to any conditions prescribed by the regulations, and any imposed by the issuing body.

Clause 133 Issuing body may vary pollution certificates

This clause provides the authority for the issuing body to vary the terms of a pollution certificate where it is satisfied that the criteria prescribed in the regulations are met.

Clause 134 Revocation of pollution certificates

This clause allows the issuing body to revoke a pollution certificate subject to meeting the requirements of the regulations.

Division 4—Offences and civil penalties relating to certain Australian vessels operating without pollution certificates

Clause 135 Taking vessels to sea without pollution certificates—owner

This clause creates an offence and civil penalty for the owner of a vessel that is required by the regulations to have a pollution certificate of a specified kind to take, or cause or permit the taking, of the vessel to sea without the relevant pollution certificate. Penalties are considered appropriately severe to act as a deterrent considering the potential harm non compliance could cause as well as meeting Australia’s international obligations under the *International Convention for the Prevention of Pollution from Ships*, (MARPOL Convention). This Convention places an obligation on all parties to ensure that the penalties prescribed under domestic legislation are ‘adequate in severity to discourage violations...’

Clause 136 Taking vessels to sea without pollution certificates—master

This clause creates an offence and civil penalty for the master of a vessel that is required by the regulations to have a pollution certificate of a specified kind to take, or cause or permit the taking, of the vessel to sea without the relevant pollution certificate. Penalties are considered appropriately severe to act as a deterrent considering the potential harm non compliance could cause as well as meeting Australia’s international obligations under the *International Convention for the Prevention of Pollution from Ships*, (MARPOL Convention). This Convention places an obligation on all parties to ensure that the penalties prescribed under domestic legislation are ‘adequate in severity to discourage violations.’

Clause 137 Obligation to notify alterations of vessels that relate to pollution certificates

A further offence and civil penalty is created under this clause for the owner or master of a vessel if it is altered in such a way as to affect the pollution certificates that vessel is required to have; and no advice of the alterations have been provided to AMSA, and each issuing body involved within a prescribed period.

Part 3—Pollution or damage to the marine environment

Division 1—Vessels to which this Part applies

Clause 138 Vessels to which this Part applies

This clause applies the Part to a broad range of vessels, due to the potential environmental impacts of marine pollution from any vessel involved in a marine incident.

Clause 139 Geographical application

This clause defines the geographical application of offences and civil penalties of Division 2. The Division is expressed to apply generally in the coastal sea, which includes the territorial sea, the EEZ and beyond the EEZ. Special provision is made, consistently with international law, for foreign vessels. A master of a foreign vessel may not be prosecuted for offences or liable for civil penalties for actions that take place beyond the EEZ. This limitation is in line with the limits of a coastal state’s powers under UNCLOS.

Division 2—Vessels polluting or damaging the Australian marine environment

Clause 140 Operating a vessel so as to pollute or damage the Australian marine environment

This clause provides a new offence in circumstances where the master of a vessel operates the ship in a negligent or reckless manner that causes pollution or damage to the marine environment in Australian waters. Criminal and civil penalties are provided for and a higher civil penalty may apply in the case of serious damage. The high penalties are intended to be appropriate to discourage non-compliance and take into consideration the levels of cost saving that shipping operators may achieve through non-compliance and any perceived likelihood of non-compliant ships being identified and prosecuted.

Clause 141 Failure to ensure vessel is operated so as to not cause pollution or damage to the Australian marine environment

This clause provides a new offence in circumstances where the master of a vessel fails to ensure that the ship is not operated in a negligent or reckless manner that causes pollution or damage to the marine environment in Australian waters. Criminal and civil penalties are provided for and a higher civil penalty may apply in the case of serious damage. The high penalties are intended to be appropriate to discourage non-compliance and take into consideration the levels of cost saving that shipping operators may achieve through non-compliance and any perceived likelihood of non-compliant ships being identified and prosecuted.

Division 3—Australian vessels causing pollution or damage to the marine environment outside Australia

Clause 142 Operating a vessel so as to pollute or damage the marine environment outside Australia

This clause provides a new offence in circumstances where the master of an Australian vessel operates the ship in a negligent or reckless manner that causes pollution or damage to the marine environment in waters of the high seas outside Australia. Criminal and civil penalties are provided for and a higher civil penalty may apply in the case of serious damage. The high penalties are intended to be appropriate to discourage non-compliance and take into consideration the levels of cost saving that shipping operators may achieve through non-compliance and any perceived likelihood of non-compliant ships being identified and prosecuted.

Clause 143 Failure to ensure vessel is operated so as to not cause pollution or damage to the marine environment outside Australia

This clause provides a new offence in circumstances where the master of an Australian vessel fails to ensure that the ship is not operated in a negligent or reckless manner that causes pollution or damage to the marine environment in waters of the high seas outside Australia. Criminal and civil penalties are provided for and a higher civil penalty may apply in the case of serious damage. The high penalties are intended to be appropriate to discourage non-compliance and take into consideration the levels of cost saving that shipping operators may achieve through non-compliance and any perceived likelihood of non-compliant ships being identified and prosecuted.

Division 4—Aggravated contraventions of civil penalty provisions and matters to which Court may have regard in determining standard of care etc.

Clause 144 Aggravated contraventions of civil penalty provisions

This clause provides for the circumstances in which an offence is an aggravated offence: where serious harm to the environment has occurred or may occur as a result of the incident. Matters which may indicate serious harm include the magnitude of the harm, the size, sensitivity and environmental significance of the area affected and the prospects for repairing the harm. This clause is based on s 38GB of the *Great Barrier Reef Marine Park Act 1975*.

Clause 145 Matters to which eligible court may have regard in determining standard of care and risk

This clause details the matters an eligible court as defined can have regard to in considering aggravated behaviour and provides guidance to a Court in determining the standard of care and the risk associated with aggravated breaches.

Part 4—Directions powers relating to foreign vessels

Division 1—Vessels to which this Part applies

Clause 146 Vessels to which this Part applies

This Part applies (as affected by clause 12) to foreign vessels.

Division 2—Directions may be given to vessels

Clause 147 Directions in relation to vessels

This is an important power which enables AMSA to protect the Australian environment by giving a written notice to a foreign vessel forbidding entry to Australian ports or offshore terminals in Australia's exclusive economic zone, or imposing entry conditions, if it is satisfied that the foreign vessel is not constructed, equipped or operated in accordance with the MARPOL Convention, irrespective of whether or not the vessel is required to be so constructed.

Clause 148 Persons must comply with direction

This clause creates an offence and civil penalty for a person who fails to comply with a direction issued under clause 147.

Clause 149 Geographical application

Sub-clause (1) dis-applies clause 9 of the Bill to offences and civil penalty provisions in sub-clauses 148 (1) or 148 (3).

Sub-clause (2) provides for the offences and civil penalty provisions to apply in respect of foreign vessels, relevantly, in the EEZ.

Chapter 5—Tonnage

Part 1—Preliminary

The International Convention on Tonnage Measurement of Ships 1969 established uniform principles to calculate tonnage of ships engaged on international voyages. It requires that each ship is issued with an International Tonnage Certificate attesting to the assessment of its

gross and net tonnages in accordance with the principles contained in the Convention. It also allows for the inspection of ships in the ports of contracting States to verify that each carries an International Tonnage Certificate and to ensure that the ship's characteristics comply with the data on the Certificate. Australia is a party to the Tonnage Convention and this Chapter enables the necessary regulation to give effect to the Convention or other requirements to establish a vessel's tonnage.

Besides safety regulation the correct calculation of tonnage is important in the application of port dues and fees and other levies. It is also relevant to the establishment of limits to liability under the Convention on Limitation of Liability for Maritime Claims, which is scaled according to the gross tonnage of vessels calculated in accordance with the Tonnage Convention.

Clause 150 Simplified outline of this Chapter

This clause outlines the subject matter with which the Chapter deals.

Clause 151 Vessels to which this Chapter applies

These clauses indicate the application of Chapter 5 to the tonnage of Australian, foreign and other vessels as prescribed.

Clause 152 Certain vessels taken to be registered

This clause allows a vessel to be identified as registered in a particular country by the flag flown or by an expressed intention of its intended registration.

Part 2—Tonnage regulations and certificates

Clause 153 Tonnage regulations

This is the specific clause authorising regulations to give effect to the issue of International Tonnage Certificates in line with the procedures in the Convention, as well as the issue of other tonnage measurement certificates which assign tonnage to vessels or measure tonnage differently. Effectively, this enables tonnages either be measured in accordance with the measurement procedures of the Tonnage Convention or, if that Convention is not applicable, assigned to a vessel in another way. This clause recognises that there is a need to know the tonnage of all vessels, for example in applying levies and fees to such vessels to ensure they make a contribution towards the costs of navigation aids, ports facilities and other services. However, it is not necessarily appropriate to subject vessels to the same procedures as set out in the convention, where this could impose a significant cost on small vessel operators when an acceptable alternative is available.

An issuing body under this part is defined in subclause 14(1) of this Bill as AMSA or a recognised organisation that has been prescribed by Regulations.

Clause 154 Applications for tonnage certificates

This clause allows a person to apply to the issuing body for a tonnage certificate of a kind specified in the regulations in relation to a regulated Australian vessel.

Clause 155 Issuing Body to issue tonnage certificates

This clause provides for the issuing body to issue a tonnage certificate in relation to a regulated Australian vessel if there is a valid application and the issuing body is satisfied that the criteria prescribed by the regulations are met.

Clause 156 Issuing body may vary tonnage certificates

This clause provides the issuing body with a variation power in relation to tonnage certificates, subject to being satisfied that the criteria prescribed by the regulations are met.

Clause 157 Revocation of tonnage certificates

This clause provides the power for the issuing body to revoke a tonnage certificate if it is satisfied that the criteria prescribed by the regulations are met.

Part 3—Additional provisions relating to non-Tonnage Convention vessels**Clause 158 Register tonnage of non-Tonnage Convention vessels that are registered**

This clause provides for the allocation of a tonnage measurement to vessels that are not covered by the Convention, in accordance with the regulations.

Clause 159 Tonnage of non-Tonnage Convention vessels to be measured in certain cases

Where an unregistered (non-Tonnage Convention) vessel enters a port in Australia or there is a dispute over the tonnage of a non-Tonnage Convention vessel this clause provides for its tonnage to be measured under the regulations.

Clause 160 Assignment of other tonnages to non-Tonnage Convention vessels

This clause provides for a tonnage to be assigned by the regulations to a non-Tonnage Convention vessel in circumstances where the apparent tonnage already assigned under other provisions of the regulations is inappropriate. The revised tonnage assigned then becomes its tonnage for the purpose of this Bill.

Chapter 6—Safety of navigation**Part 1—Preliminary**

It is a generally accepted principle in international law and practice that the ship's master has responsibility for the safe navigation of a ship at all times, including when it is operating under pilotage or a vessel traffic management system.

Clause 161 Simplified outline of this Chapter

This clause describes the Parts of Chapter 6, which deals with the safety of navigation. Part 2 deals with pilotage for certain vessels. Part 3 deals with prevention of collisions. Part 4 imposes obligations to render assistance and report incidents. Part 5 deals with aids to navigation, which are maintained by AMSA. Part 6 deals with safe navigation, including vessel traffic services, mandatory routeing, reporting of movement of vessels and the Australian Hydrographic Service.

Part 2—Pilotage**Division 1—Vessels to which this Part applies****Clause 162 Vessels to which this Part applies**

This clause describes the application of Part 2 of this chapter. It applies to all vessels 70 metres and over in length that are loaded with oil, chemicals or liquefied gas and therefore require a pilot for:

- (a) transit to or from, any waters of the Australian coastal sea that are specified in the regulations; or
- (b) in any waters of Australia's exclusive economic zone that are specified in the regulations.

The Bill allows for the operation of any State or Territory law governing pilots or pilotage in their jurisdiction that is capable of operating concurrently with this Chapter.

Division 2—Regulations relating to pilotage etc.

Clause 163 Regulations relating to compulsory pilotage

This clause creates a comprehensive regulation making power for compulsory pilotage in Australian territorial waters that are prescribed, the licensing of pilots, including standards of competence to be attained and other conditions to be satisfied by a person in order to be licensed as a pilot under this Bill. A duty to engage a pilot is an important adjunct to the safety of navigation and pilots must be suitably qualified and knowledgeable about the area in which they work.

Clause 164 Regulations relating to licensing of pilots and pilotage providers

Under this clause the regulations may establish the eligibility requirements for licensing pilots and pilotage providers including; the standards of competence for pilots and pilotage providers; the conditions they must satisfy; the issue, recall and surrender of licences; duration, variation suspension and cancellation of licences; instruction, training and examination; and the gaining of sea service. Conditions may include age, medical fitness, nationality, citizenship and residence.

Clause 165 Regulations relating to operations of licensed pilots and licensed pilotage providers

This clause creates a further comprehensive regulation making power for licensed pilots and pilotage providers in relation to their operations, which may include: their duties and obligations in discharging those duties; the professional relationship between a pilotage provider and a licensed pilot; the provision of equipment or information by pilotage providers to pilots, keeping of records, training of pilots, and performance monitoring. The regulations may also cover professional liability and the limitation of that liability, the duties of a licensed pilot and the manner in which a licensed pilot is to discharge his or her duties; the professional relationship between a licensed pilot and the master or other officers of a vessel.

Division 3—Requirement to navigate with a licensed pilot

Clause 166 Navigating without a licensed pilot

This clause creates an offence and civil penalty for the master or owner of a vessel subject to pilotage if the vessel navigates in a compulsory pilotage area without a licensed pilot. An exception is provided if the person proves that the vessel was exempted under clause 172 from the requirement to navigate with a licensed pilot in the area and that the navigation complied with the terms of the exemption.

A further exception is provided if the person proves that the vessel navigated in a compulsory pilotage area because of saving life at sea or other unavoidable cause, or the person is the owner and the owner proves that he or she took all reasonable precautions to ensure that the vessel would not navigate in a compulsory pilotage area in contravention of that subclause.

The person bears the legal burden of proof in each case.

Clause 167 Offences against section 166 by masters of foreign vessels

Sub-clause (1) dis-applies clause 9 of the Bill to offences in clause 166.

Sub-clause (2) provides for the offences to apply to foreign vessels, relevantly, in the territorial sea whether or not in the course of innocent passage.

Clause 168 Representations about being a licensed pilot or pilotage provider

This clause creates an offence and civil penalty for false representation as a licensed pilot or pilotage provider.

Clause 169 Unlicensed person performing duties of licensed pilot or pilotage provider

This clause creates an offence and civil penalty for a person who performs the duties of a licensed pilot when they are not a licensed pilot, and likewise for the duties of a licensed pilotage provider.

Clause 170 Licensed pilots to issue certificates

This clause provides for a pilot to give the master of a vessel a certificate to indicate that the vessel has been piloted through a compulsory pilotage area before disembarking.

Clause 171 Engaging an unqualified person to perform duties of licensed pilot

This clause creates an offence for anyone employing another to perform the duties of a licensed pilot when the latter is not licensed.

Division 4—Exemption from requirement to navigate with a licensed pilot

Clause 172 Application for exemption

This clause enables AMSA to grant an exemption from the requirement to navigate with a licensed pilot in a compulsory pilotage area.

The exemption may be refused, a lesser exemption than that applied for may be granted or the exemption may be subject to conditions specified by AMSA in the exemption instrument. AMSA must provide the applicant with a copy of the exemption instrument and in the case of a refusal (in whole or part) a statement of reasons for doing so.

An exemption made under this clause granting or refusing an exemption is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003* – the provision is included to assist the reader.

Clause 173 Failure to comply with conditions of exemption

This clause creates an offence and civil penalty for a master or owner of a vessel subject to pilotage where AMSA has granted an exemption in respect of the proposed navigation and the vessel fails to comply with those conditions.

The offence does not apply if the owner proves that all reasonable precautions were taken to ensure that the vessel would not navigate in the compulsory pilotage area.

The burden of proof is placed on the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Division 6—Relationship with the Great Barrier Reef Marine Park Act 1975

Clause 174 Part is in addition to Great Barrier Reef Marine Park Act 1975 [580]

This clause provides that Part 2 is in addition to and does not detract from the requirements in any part of the *Great Barrier Reef Marine Park Act 1975*. A person is not liable to be prosecuted under both Acts in respect of the same act or omission.

Part 3—Prevention of Collisions

Uniform, internationally accepted requirements for safe and orderly navigation at sea are necessary to prevent collisions and related incidents, such as groundings, that may cause loss of life, damage to property or pollution of the environment. Collisions and groundings represent the most common source of maritime incidents, despite the adoption of modern navigation aids such as radar, sonar, electronic charting display and information systems and GPS. The costs of repairs to vessels and remediation of any resulting environmental pollution are significant issues. Legislation seeks to encourage the use of consistent “rules of the road” to prevent accidents. These rules encompass such matters as keeping an adequate lookout, procedure for right of way, procedures for use of radar and radio equipment, standards for signalling and navigation equipment, warning lights and sound signals and a duty to comply with traffic instructions and traffic separation schemes. Particular rules for ships carrying hazardous or noxious cargoes or representing other special risks to the environment are also incorporated.

Division 1—Vessels to which this Part applies

Clause 175 Vessels to which this Part applies

On the high seas, the rules for collisions in this Part apply to regulated Australian vessels, domestic commercial vessels and recreational vessels with Australian nationality, as affected by clause 12.

The Part also applies to these vessels in the EEZ, and applies to these vessels and to foreign vessels in the territorial sea of Australia. Further, to the extent that they give effect to the Prevention of Collisions Convention, the rules also apply to these vessels as well as to foreign vessels in waters on the landward side of the territorial sea and internal waters.

Division 2—Collisions, lights and signals

Clause 176 Power to make regulations relating to collisions, lights and signals

This clause creates a power to make regulations to prevent collisions and the use of lights and signals on vessels, including giving effect to the Prevention of Collisions Convention.

Division 3—Operating a vessel in contravention of regulations

Clause 177 Operating a vessel in contravention of the regulations—owner

This clause creates an offence and civil penalty for the owner of a vessel who operates, or causes or permits the operation of the vessel in contravention of regulations made under clause 176.

Clause 178 Operating a vessel in contravention of the regulations—master

This clause creates an offence and civil penalty for the master of a vessel who operates, or causes or permits the operation of the vessel in contravention of regulations made under clause 176.

Division 4—No presumption of fault

Clause 179 No presumption of fault

This clause provides that there is no presumption of fault on the part of a seafarer or a vessel merely because a vessel involved in a collision has contravened the requirements of this Part.

Part 4—Obligation to render assistance and report incidents

Division 1—Vessels to which this Part applies

Clause 180 Vessels to which Part applies

This clause applies the Bill to all domestic and foreign vessels in Australian waters unless the National Law or State and Territory law apply (because of the effect of clause 12).

Division 2—Obligation to render assistance

Clause 181 Obligation to render assistance

This clause imposes an obligation on the masters of vessels at sea to render assistance and creates an offence for failing to do so in line with the SOLAS Convention.

The obligation is to proceed with all speed to the assistance of persons in distress, upon receiving a signal from any source that the ship, aircraft or survival craft is in distress. The circumstances in which the obligation does not apply are spelled out, but the burden of proof rests with the master. The burden of proof rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 182 Obligation to render assistance if requisitioned

This clause enables the master of a vessel in distress to requisition the vessel best able to render assistance after consulting with the masters of vessels responding to his or her distress signal. The penalty is in line with the gravity of failing to respond in such circumstances. Circumstances that may militate against an immediate response are set out in the clause but the burden of proof rests with the master who has been requisitioned. The burden of proof rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 183 Offences against clauses 181 and 182 by masters of foreign vessels

Sub-clause (1) dis-applies clause 9 of the Bill to offences in clauses 182 and 183.

Sub-clause (2) provides for the offences to apply to foreign vessels, relevantly, in the territorial sea whether or not in the course of innocent passage.

Clause 184 Obligation to record requests for assistance

This clause creates an offence for failing to proceed to the assistance of others in distress if the master receives information to the effect that they are in distress and if the information is not recorded in the official log book.

Clause 185 Reporting of marine incidents to AMSA--owner

These clauses creates an obligation on the owner of a vessel to report significant incidents such as death, serious injury, loss of a person from a vessel and loss of or damage to a vessel, defined in full in clause 14, to AMSA and creates an offence for failing to do so. The burden of proof rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 186 Reporting of marine incidents to AMSA--master

This clause creates an obligation on the master of a vessel to report significant incidents such as death, serious injury, loss of a person or cargo from a vessel and loss of or damage to a vessel, defined in full in clause 14, to AMSA and creates an offence for failing to do so. The burden of proof rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 187 Report of dangers to navigation

In the interests of safety of navigation it is important that the master of a ship sends information on all direct dangers encountered during a voyage to all ships in the vicinity and to the nearest shore authorities. This clause creates an obligation on the master of a vessel to report serious dangers to navigation, that he or she becomes aware of, to other shipping in the vicinity and to convey information to help avoid the danger, and creates an offence for failing to do so. Examples of what constitutes a serious danger are set out in the clause. A defence against compliance is provided if it involves sending a distress signal but the burden of proof rests with the master.

Part 5—Aids to navigation

Establishment of aids to navigation, and their management was previously dealt with the *Lighthouses Act 1911*. That Act is repealed by this Bill, and a modernised version of the operative provisions and related offences is incorporated here.

Division 1—Preliminary

Clause 188 Regulations relating to marine aids to navigation

This clause enables regulations to be made in relation to aids to navigation as defined, the modernised definition of which is located in clause 14.

Division 2—AMSA's powers in relation to aids to navigation

Clause 189 Acquisition of aids to navigation by compulsory process

This clause empowers AMSA to compulsorily acquire any aids to navigation from a State or Territory under the terms of the *Lands Acquisition Act 1989*.

Clause 190 Power to establish, maintain and inspect aids to navigation

This clause enables AMSA to establish, maintain or vary aids to navigation and to inspect any such aids that are maintained by others whether by States and Territories or private individuals. and to enter upon public or private property to do so. This clause replicates current AMSA powers under sections of the *Lighthouses Act 1911*, and is used regularly to maintain and repair lighthouses. These persons contracted by AMSA are appropriately authorised in writing by AMSA to enter property to undertake maintenance.

In addition, current Native Title Determinations have been made on the basis that AMSA has an existing statutory right to cross private land to access Aids to Navigation.

Clause 191 Powers in relation to aids to navigation

This clause details the actions that AMSA can require by Notice to an owner of an Aid to Navigation when it is deemed by AMSA that it is important to the safety of navigation to do so.

An exemption made under this clause is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* but subclause (6) is included to assist readers.

Clause 192 Returns of aids to navigation

This clause requires an entity in control of an Aid to Navigation to provide AMSA with information as to the operation of the Aid when it is commissioned, decommissioned or if the aid has been changed or altered in a way that could affect the safety of navigation.

Division 3—Offences and civil penalties relating to aids to navigation**Subdivision A—Failure to comply with notice****Clause 193 Failure to comply with a notice about aids to navigation**

This clause creates an offence and civil penalty for failure to comply with a notice given by AMSA under clause 191. The burden of proof for the circumstances of a defence rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Subdivision B—Destruction etc. of aids to navigation**Clause 194 Intentionally destroying, fouling or damaging aids to navigation**

This clause creates an offence and civil penalty for a person who deliberately does some act, or neglects to do some act with the intention that doing or not doing that act will destroy, foul or damage an aid to navigation, therefore causing the potential for loss of life or damage to the environment. The burden of proof for the circumstances of a defence rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 195 Recklessly destroying, fouling or damaging aids to navigation

This clause creates an offence and civil penalty for a person who does some act, or neglects to do some act that destroys, fouls or damages an aid to navigation, therefore causing the potential for loss of life or damage to the environment, and the person was reckless in doing that act. The burden of proof for the circumstances of a defence rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 196 Negligently destroying, fouling or damaging aids to navigation

This clause creates an offence and civil penalty for a person who does some act, or neglects to do some act that destroys, fouls or damages an aid to navigation, therefore causing the potential for loss of life or damage to the environment, and the person was negligent in doing that act. The burden of proof for the circumstances of a defence rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 197 Intentionally obstructing the view of aids to navigation

This clause creates an offence and civil penalty for a person who deliberately does some act, or neglects to do some act with the intention that doing or not doing that act will obstruct the view of an aid to navigation, therefore causing the potential for loss of life or damage to the environment. The burden of proof for the circumstances of a defence rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 198 Recklessly obstructing the view of aids to navigation

This clause creates an offence and civil penalty for a person who does some act, or neglects to do some act that obstructs the view of an aid to navigation, therefore causing the potential for loss of life or damage to the environment, and the person was reckless in doing that act. The burden of proof for the circumstances of a defence rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 199 Negligently obstructing the view of aids to navigation

This clause creates an offence and civil penalty for a person who does some act, or neglects to do some act that obstructs the view of an aid to navigation, therefore causing the potential for loss of life or damage to the environment, and the person was negligent in doing that act. The burden of proof for the circumstances of a defence rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 200 Intentionally interfering with aids to navigation

This clause creates an offence and civil penalty for a person who deliberately does some act, or neglects to do some act with the intention of interfering with the normal operation of an aid to navigation, therefore causing the potential for loss of life or damage to the environment. The burden of proof for the circumstances of a defence rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 201 Recklessly interfering with aids to navigation

This clause creates an offence and civil penalty for a person who does some act, or neglects to do some act that interferes with the normal operation of an aid to navigation, therefore causing the potential for loss of life or damage to the environment, and the person was reckless in doing that act. The burden of proof for the circumstances of a defence rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 202 Negligently interfering with aids to navigation

This clause creates an offence and civil penalty for a person who does some act, or neglects to do some act that interferes with the normal operation of an aid to navigation, therefore causing the potential for loss of life or damage to the environment, and the person was negligent in doing that act. The burden of proof for the circumstances of a defence rests with the defendant for this offence because the evidence of the offence is peculiarly within the defendant's knowledge and not available to the prosecution.

Clause 203 Intentional removal or alteration of aids to navigation

This clause creates an offence and civil penalty for a person who deliberately does some act, or neglects to do some act with the intention that doing or not doing that act will result in the removal or alteration of an AMSA aid to navigation, therefore causing the potential for loss of life or damage to the environment.

Clause 204 Reckless removal or alteration of aids to navigation

This clause creates an offence and civil penalty for a person who does some act, or neglects to do some act that results in the removal or alteration of an AMSA aid to navigation, therefore causing the potential for loss of life or damage to the environment, and the person was reckless in doing that act.

Clause 205 Riding by or making fast to aids to navigation

This clause creates an offence and civil penalty for a person who rides by or makes fast to an AMSA aid to navigation where the person is reckless as to that fact.

Subdivision C—Other offences relating to aids to navigation

Clause 206 Trespassing on aids to navigation

This clause creates an offence and civil penalty for a person who trespasses on an AMSA aid to navigation, due to the potential for damage or interference in the operation of the aid.

Clause 207 Trespassing on vessels or property used by AMSA

This clause creates an offence and civil penalty for a person who trespasses on navigational aids, vessels or other property used by AMSA in establishing, maintaining or servicing aids to navigation.

Clause 208 Notice of damage to aid to navigation

This clause imposes an obligation on anyone who damages a navigational aid belonging to AMSA to report it as soon as practicable to AMSA and creates an offence and civil penalty for failure to do so due to the potential risk to vessels and lives through the non operation of an Aid to Navigation.

Subdivision D—Geographical application

Clause 209 Geographical application

Sub-clause (1) dis-applies clause 9 of the Bill to certain offences and civil penalty provisions in Subdivision B.

Sub-clause (2) provides for the offences and civil penalty provisions to apply in respect of foreign vessels, relevantly, in the territorial sea whether or not in the course of innocent passage.

Division 4—Additional matters relating to aids to navigation

Clause 210 Liability for damage, etc

This clause enables a court to award damages to AMSA against anyone convicted of any of the offences or is issued a civil penalty under Division 3 or to direct a master or owner of a vessel to pay for the cost of repairs to a navigational aid.

Sub-clause (2) specifies that in circumstances where an AMSA Aid to Navigation is removed, damaged or destroyed, the person responsible is liable to pay AMSA the costs of replacing or repairing the Aid.

Clause 211 Transfer of aids to navigation to be valid

This clause provides that where an aid to navigation is to be purchased by AMSA, any instrument or assurance for granting or transferring the Aid to Navigation to AMSA is effective to vest title in AMSA.

Part 6—Safe Navigation

Division 1—Preliminary

Clause 212 Vessels to which this Part applies

Part 6 applies to all foreign and domestic vessels including recreational vessels.

Division 2—Vessel traffic services

Clause 213 Regulations relating to vessel traffic services

This clause allows the regulations to provide for the establishment of vessel traffic services (VTS) to aid in the provision of safe navigation. The regulations may provide for, among other things, the establishment of such services and their authorisation by AMSA, testing, training and auditing of VTS and the provision of reporting arrangements to a vessel traffic service authority to underpin the accuracy of the service.

Clause 214 Liability of master or owner under vessel traffic service arrangements

This clause provides that the master of a vessel is not relieved of the responsibility for safe navigation simply because the vessel is subject to vessel traffic service arrangements and that the master or owner still bears the normal responsibility for loss or damage caused by the vessel or by faulty navigation.

Clause 215 Reports must be provided to a vessel traffic service authority

This clause creates an offence and civil penalty for any person who is required to provide a report or information to a vessel traffic service authority by the regulations and does not do so.

Clause 216 False or misleading information provided to a vessel traffic service authority

This clause creates an offence and civil penalty for any person who is required to provide a report or information to a vessel traffic service authority by the regulations and provides information that is materially false or misleading.

Clause 217 Geographical application of offences

This clause provides that clause 9, which relates to the geographical application of offence provisions generally, does not apply to offences or civil penalty provisions in clauses 215 or 216 and regulations made under clause 213. Effectively, this clause allows regulations about vessel traffic services to apply to foreign vessels in the EEZ where to do so is consistent with international law.

Division 3--Mandatory routeing

Some marine areas require higher standards of environmental protection and can be declared Particularly Sensitive Sea Areas (PSSA). These areas are provided special protection through measures approved by the International Maritime Organization (IMO) because of significant and recognized ecological, socio-economic, or scientific attributes where such attributes may be vulnerable to damage by international shipping activities.

This Division of the Bill enables the legal instrument establishing this measure in Australia which has been approved and adopted by IMO to prevent, reduce, or eliminate the threat or identified vulnerability in the sensitive area. The measures include restrictions on discharges from ships, adoption of ship routeing measures in the Torres Strait in accordance with IMO general principles on ships' routeing, and other navigational measures, such as compulsory pilotage and vessel traffic management systems in the Great Barrier Reef.

This Division of the Bill creates offences for failure to comply with a mandatory routing scheme approved by IMO for these purposes.

Clause 218 Mandatory IMO ship routeing systems

This clause provides for the mandatory routing of vessels to be implemented and enforced as part of the maintenance of safe navigation and creates an offence and civil penalty for failing to adhere to the routing system. However, it also provides a defence where the routing system is not adhered to because of stress of weather, saving life at sea or other unavoidable cause.

Clause 219 Geographical application

This clause provides that clause 9, which relates to the geographical application of offence provisions generally, does not apply to offences and civil penalty provisions in clause 218. Effectively, this clause allows for the application of mandatory routeing systems to foreign vessels in the exclusive economic zone.

Clause 220 Navigation not in accordance with mandatory ship routeing system to be entered in log

Where the a vessel does not navigate in accordance with the mandatory ship routing system this clause requires the master to enter the details in the ship's log and creates an offence and civil penalty for failure to do so.

Division 4—Reporting of movement of vessels

Clause 221 Regulations relating to reporting requirements

This clause enables regulations to be made that set out the detailed requirements for *reporting matters* for foreign vessels entering or leaving a prescribed area, such as a port, and all regulated Australian vessels in any area. Such regulations might include sailing plans for vessels departing from ports in Australia, details of vessel position course and speed when traversing a prescribed area and the timing of such reports. The *prescribed area* is any part of the sea for which Australia has search and rescue responsibility together with any additional area that Australia is able to obtain reports under an international instrument.

A *reporting matter* is also defined in relation to all ship movements, including those conferred on Australia by international treaties.

Clause 222 Geographical application

This clause provides that clause 9, which relates to the geographical application of offence provisions generally, does not apply to offences or civil penalty provisions under regulations made under clause 221. Effectively, this clause allows regulations about mandatory reporting to apply to foreign vessels in the EEZ where to do so is consistent with international law.

Division 5—The Australian Hydrographic Service and offences and civil penalties relating to taking a vessel to sea without charts, etc.

Clause 223 Functions of the Australian Hydrographic Service

This clause recognises the role of the Australian Hydrographic Service as the Commonwealth Government body responsible for the production, publication and distribution of nautical charts and other information required for the safety of ships navigating in Australian waters and for the provision of hydrographic services required by SOLAS.

Clause 224 Taking a vessel to sea without nautical charts and publications—owner

This clause creates an offence and civil penalty for the owner of a vessel that takes to sea, or causes or permits the taking to sea of a vessel without the necessary nautical charts and publications appropriately up to date and of a suitable quality for the voyage.

Clause 225 Taking a vessel to sea without nautical charts and publications—master

This clause creates an offence and civil penalty for the master of a vessel that takes to sea, or causes or permits the taking to sea of a vessel without the necessary nautical charts and nautical publications appropriately up to date and of a suitable quality for the voyage.

Chapter 7—Wrecks and Salvage

Part 1—Preliminary

Clause 226 Simplified outline of this Chapter

This clause provides a short outline of the Chapter. By providing for a regime to deal with wrecks the Chapter is designed to enable the prompt removal of hazards to navigation and prevent possible environmental damage. The aim is to limit the potential for further damage or losses due to collision with the wreck as well as losses consequential to any need to deviate around a wreck or denial of maritime facilities due to the location and hazardous nature of a wreck. Wrecks can directly affect the efficient functioning of the maritime industry and may also affect other industries such as fishing and tourism.

The proposed law provides for quick removal of a wreck in these circumstances. It is appropriate that responsibility for removal of a wreck should rest with the owner, and that an owner cannot escape liability by abandoning the wreck. If an owner cannot or will not fulfil this responsibility, provision for public authorities to do so is required.

While State and Territory laws generally make similar provisions for wreck removal, particularly in harbour areas, it is desirable that this Bill also provide for wreck removal to cover circumstances where state laws cannot apply. The Bill allows AMSA to remove any ship or part of a regulated Australian vessel or a foreign vessel within a specified period of time but subject to limitations with regard to historic wrecks.

Part 2—Wrecks

Division 1—Wrecks to which this Part applies

Wreck is defined in clause s14 of this Bill.

Clause 227 Wrecks to which this Part applies

This clause applies the Bill to wreck of, or from, foreign vessels and regulated Australian vessels.

Division 2—Rights and powers in relation to wrecks

Clause 228 Right of Commonwealth to unclaimed wreck

This clause asserts the Commonwealth's control over all unclaimed wrecks.

Clause 229 Dealing with wrecks

This clause details the powers available to AMSA in dealing with wreck and the geographical locations where those powers can be applied.

A notice given by AMSA is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* but subclause (4) is included to assist readers.

Clause 230 Person must comply with notice

This clause creates an offence and civil penalty for a person who fails to comply with a notice issued under clause 229.

The quantum of the penalties, both civil and criminal, reflects the fact that the removal of wreck may incur considerable expense and only a penalty commensurate with the cost of removal will encourage owners to move quickly to comply with the notice.

Clause 231 Powers to pass over land and require assistance etc.

This clause enables AMSA to access a wreck by land, without the owner's consent if necessary to render assistance or save life, and to bring a wreck ashore. It also creates an offence and civil penalty for impeding AMSA in doing so.

Clause 232 Notification about wrecks

This clause imposes a duty upon the owner or master of a vessel to report the occasion of a wreck to AMSA as soon as possible together with details about its location, vessel type, cargo, hazardous materials and nature of the oil aboard the vessel. It also creates an offence and civil penalty for failing to do so. It excludes vessels that are outside Australia's territorial sea.

Clause 233 Finding or taking possession of wreck

This clause requires anyone that finds or takes possession of a wreck to notify AMSA within a specified period, advise its location and creates an offence and civil penalty for failing to do so.

Clause 234 AMSA must give notice of wreck

This clause requires AMSA to give public notice of wreck that has been reported to them under clauses 232 and 233 in case of any claims that may be made on the wreck.

Clause 235 Defacing or obliterating marks on a wreck

This clause creates an offence and civil penalty for a person who does something or does not do something that leads to the defacement or removal of marks on a wreck. Defacing or obliterating marks on the wreck could cause a danger to navigation.

Clause 236 Removing a wreck without consent

This clause forbids the removal of wrecks without the permission of AMSA or the owner and creates an offence for doing so.

Clause 237 Powers of Customs

This clause is designed to ensure that the Bill does not hamper the exercise of Customs powers.

Clause 238 Limits on powers to deal with wrecks

This clause limits the powers conferred on AMSA to deal with historic wrecks (coming under both Commonwealth and State/territory legislation) unless it is to save human life, secure the safe navigation of vessels or deal with an emergency that involves a serious threat to the environment.

Clause 239 Certain provisions not applicable to historic wrecks

This clause provides that the offence provisions at clauses 233 and 236 do not apply to historic wrecks (coming under both Commonwealth and State/territory legislation).

Part 3—Salvage

This part of the Bill gives effect to the provisions of the Salvage Convention, which is designed to impose an obligation to assist persons in distress; provide an incentive for promptly rescuing life and property at risk through provision of rewards and compensation for salvors, including the creation of a lien over any salvaged property to secure such rewards; and encourage efforts to prevent damage to the environment even where property cannot be saved.

Division 1—Vessels to which this Part applies**Clause 240 Vessels to which this Part applies**

This clause applies the Bill to all vessels whenever judicial or arbitral proceedings are brought in Australia but excludes offshore drilling and exploration platforms which are regulated by the National Offshore Petroleum Safety and Environmental Management Authority, inland waters which are regulated by the States and Territories and maritime and cultural property on the seabed.

Division 2—Regulations relating to salvage**Clause 241 Regulations relating to salvage**

This clause enables regulations to give effect to the Salvage Convention and for salvage operations conducted by the Commonwealth, the States or Territories.

The regulations may provide for, among other things, the action that may be taken as a result of salvage operations, the execution of bonds, the adjudication and enforcement of bonds and conditions under which certain claims can be made.

Clause 242 Salvage claims against the Crown, etc.

This clause protects the Commonwealth from claims for damages where articles of post are damaged or lost while being carried by sea during the salvage of a vessel.

Clause 243 Salvage claims by the Crown, etc.

This clause establishes the right of Commonwealth, State or Territory governments and foreign governments as prescribed by regulation to claim payment for salvage operations in the same way as any other salvor. This clause applies in respect of naval and defence vessels.

Chapter 8—Enforcement

Part 1—Preliminary

Section 244 Simplified outline of this Chapter

This chapter provides for direction, detention, monitoring, enforcement and other powers to enable AMSA to act to ensure compliance with the Bill, including the powers of officers who are authorised to investigate suspected contraventions of the legislation.

The chapter creates a regime under vessels may be boarded, inspected and detained, allowing AMSA the opportunity to enforce compliance with international safety and pollution mitigation requirements by preventing unseaworthy or substandard vessels from leaving port, in support of its obligations under international conventions to do so.

It also allows AMSA inspectors to be appointed and provides the mechanism via which vessels and premises may be inspected by consent or under warrant in order to enforce the requirements of the Bill. The regime includes the ability to enter and search premises by consent or with a warrant for the purposes of investigation, and to seize evidence in support of suspected offences or contraventions of civil penalty provisions.

In addition the clauses of the Bill empower authorised officers to ask questions and to seek production of documents.

This Chapter also contains safeguards and obligations to which authorised officers must adhere when exercising their powers. This includes that authorised officers must provide warrant details to occupiers of premises, and must announce themselves before entering premises. The legislation requires seized items to be handled in a particular way, and provides for the circumstances in which seized items will be returned to their owner. The occupiers of premises which are entered and searched will also have responsibilities under the legislation

In particular, the chapter:

1. confers wide ranging powers upon AMSA to give directions to vessels,
2. provides Customs with the power to refuse clearance to vessels,
3. provides for the appointment of inspectors to board vessels, conduct search and seizure operations and issue prohibition and improvement notices,
4. contains clauses to support civil penalties, and
5. provides for infringement notices.

Clauses in this Chapter are consistent with Part 9 of the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Clause 245 Vessels to which Chapter applies

This clause applies the Chapter to all vessels.

Part 2—Directions powers

Clause 246 Directions in relation to vessels

Sub-clause (1) sets out the directions that AMSA may give by notice in writing to the master or owner of a vessel. The directions power is a fundamental tool by which AMSA regulates shipping in Australian waters, facilitates safe navigation and protects the environment.

Through an appropriate direction, a vessel can be prevented from entering or using an Australian port or a port in the EEZ, or must comply with specified requirements on entering, using, or leaving a port in Australia or in the EEZ.

Sub-clause (2) limits the locations in which a foreign vessel may be given a direction. These limitations are consistent with international law. Directions may only be given to a foreign vessel if it is in an Australian port, entering or leaving an Australian port, in the internal waters of Australia or in the territorial sea of Australia.

A direction made under this section is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. This is because This clause is merely declaratory of the law and is included to assist readers. It does not amount to an exemption from the *Legislative Instruments Act 2003*.

Clause 247 Persons must comply with directions

Sub-clauses (1) and (3) create a criminal offence, punishable by imprisonment for up to ten years, for failing to comply with a direction given under clause 245.

Sub-clause (2) provides that the offence does not apply if the failure is necessary to save life at sea or in an emergency situation involving a threat to someone's life. The evidential burden of proving the matters in this sub-clause rests with the defendant because the evidence of these matters lies only within the defendant's knowledge.

Part 3—Detention powers

Clause 248 Power for AMSA to detain

This clause enables AMSA to detain a vessel or direct it to a port as appropriate if;

1. it is unseaworthy or substandard,
2. AMSA reasonably suspects the vessel has or may contravene the clauses of this Bill,
3. AMSA reasonably suspects that a seafarer aboard the vessel may contravene the clauses of this Bill,
4. AMSA reasonably suspects that the master or another seafarer would contravene the clauses of this Bill if they operated the vessel without the required certificates or other documentary evidence of proficiency and cannot produce the necessary documentary evidence to AMSA when requested to do so, or
5. the Bill provides for AMSA to detain the vessel.

The clause also provides for an AMSA inspector to, within 14 days, give a written notice to the registered owner or master or to fix the notice to a prominent part of the vessel. The notice must identify the vessel, indicate that it has been detained and the reason for detention,

specify contact details for further information and include information about the release of the vessel.

The clause limits AMSA's power to detain a foreign vessel in line with the limits of a coastal State's powers under the International Convention on the Law of the Sea.

Clause 249 Operating a detained vessel

This clause creates the offence for operating a vessel detained by AMSA or Customs when it has not been released or an inspector has not consented to operation of the vessel by someone whose documents were not produced.

Clause 250 Releasing a vessel from detention

This clause allows for the release of a detained vessel by AMSA or Customs, subject to conditions if appropriate.

Clause 251 Costs of detention

This clause makes AMSA liable for the incidental costs of detention or loss or damage incurred by the owner if the detention was not reasonable in the circumstances. Conversely, if AMSA incurs costs related to the detention that are reasonable in the circumstances, AMSA is entitled to compensation from the owner. Provision is also made for a Court to determine who should pay and the amount if the parties cannot agree.

Clause 252 Power for Customs to detain or refuse clearance

This clause requires the master of a vessel is to produce the necessary documentary evidence of conformity with the requirements of this Bill to a Customs official if required to do so in order to obtain clearance under the *Customs Act 1901*.

Where the required evidence is not produced Customs may detain the vessel by giving a written notice to the master or other person in control within 14 days and specifying the vessel, reason for detention, contact details and any conditions that the detention is subject to.

The clause limits jurisdiction over foreign vessels in line with the limits of a coastal State's powers under the International Convention on the Law of the Sea.

Clause 253 Refusal of clearance

This clause allows a Customs officer to refuse clearance if it is detained, or likely to be detained, or other requirements of this Bill relating to the vessel, its seafarers or equipment, have not been complied with.

Part 4—Inspectors

Division 1—Appointment of inspectors etc.

Clause 254 Appointment of inspectors

Sub-clauses (1), (2) and (3) allow AMSA to appoint suitably qualified or experienced people to assist in enforcing the legislation. They confer power on AMSA to appoint an officer or employee of an agency of the Commonwealth or of a State or Territory as an inspector for the purposes of the legislation. AMSA inspectors are able to exercise all of the powers conferred by the Bill on AMSA inspectors. Alternatively, the instrument of appointment may specify, in a particular case, that an inspector may exercise only some of the powers conferred on inspectors.

Sub-clause (4) provides that an officer or employee of a State or Territory may only be appointed as an AMSA inspector with the consent of the State or Territory.

Sub-clause (5) provides that AMSA inspectors are subject to the directions of AMSA at all times.

The flexibility to confer the powers of inspectors, including entry search and seizure powers upon persons other than law enforcement is provided to avoid the need for dependence on the availability of law enforcement resources – which may be limited – and to ensure a stable workforce can be maintained for the purpose of monitoring and enforcement of the Bill.

AMSA's national and international reputation as a safety regulator relies on the knowledge and qualification of AMSA inspectors. It is critical that AMSA employs people who not only have the right qualifications and experience but also are able to represent AMSA and apply legislation in a proper, fair and consistent manner. Inspectors are required to be qualified as Master Class 1, Chief Engineer or Naval Architect with experience at a senior level in the maritime industry. As part of the selection process for inspectors, AMSA conducts testing such as Occupational Personality Questionnaires and Reasoning Skills etc, and follow this with an interview by senior AMSA Managers. This process allows AMSA to determine not only that the person knows the industry, but importantly, that they are able to operate under the legislation in a fair and reasoned manner.

Once employed, Inspectors undergo specific AMSA Inspector training which includes an element regarding the "Inspectors legal position". This unit deals with their powers as a decision maker, and provides guidance about how the decision making process should be approached. After the theoretical inspector training, there is a period of practical training, followed by a formal review by their manager, before inspectors are approved to undertake inspections alone. Inspectors are subject to regular reviews of their performance by direct managers and the Manager (Ship Inspections).

Inspectors who are in positions that require them to act as lead investigators are required to possess an accredited and nationally recognised Certificate IV in Government (Investigation).

The formal appointment of surveyors is done by the General Manager of Maritime Operations on a recommendation from Manager, Ship Inspections. These are valid for a set period with reappointment necessary after the set period has expired.

It is considered that appointment of Police officers or others with powers under the Crimes Act 1914 is inappropriate under this Act as the experience and qualifications necessary to make judgements in relation to compliance with this Act are highly specialised.

Clause 255 Identity cards

Sub-clause (1) requires AMSA to issue an identity card to inspectors.

Sub-clause (2) requires that the identity card must be in the approved form, incorporate photo identification of the inspector, and state the powers that the inspector may exercise.

Sub-clauses (3) and (4) require the identity card to be handed in to AMSA if the person identified on the card ceases to be an inspector, unless it is lost or destroyed.

Sub-clause (5) creates a strict liability criminal offence if an inspector contravenes sub-clause (3).

Sub-clause (6) requires an inspector to carry his or her identity card at all times when carrying out their duties under the Bill.

This section is designed to ensure that only properly appointed inspectors exercise powers and perform the functions of inspectors, and that inspectors are accountable for performing the actions appropriate to their role. It is also designed to ensure that inspectors are properly and easily identified.

Division 2—Search and seizure powers of inspectors

Entry and search powers are based on internationally agreed laws, practice and procedures, for instance, the maritime port state control functions for investigating seaworthiness of vessels. Foreign-flagged vessels are subject to port state control inspections in Australian ports, consistent with international treaties, to ascertain their compliance with internationally agreed standards of safety, environment protection and crew conditions. The procedures for conducting port state control functions are based on conventions, resolutions and guidelines promulgated by the International Maritime Organisation and the International Labour Organisation, which do not envisage a requirement for warrants or a role for judicial officers.

The powers in this Bill provide that maritime inspectors appointed by AMSA are authorised to go aboard a vessel to conduct their inspections, without requiring a warrant or the specific consent of the ship's master or owner. Such provisions are consistent with the exception provisions of the Commonwealth's criminal law policy regarding search and entry of conveyances, as obtaining a warrant prior to entry to a vessel is impractical given the inherent mobility of a ship. The requirement for a warrant, particularly one issued by a judicial officer, in such circumstances may in fact frustrate maritime law operations, because of geographic and temporal problems.

Clause 256 Inspector may enter premises by consent or under a warrant

This clause provides that a person appointed as an inspector by AMSA under clause 254 can enter and exercise the monitoring powers under clause 259, having identified themselves and gained the consent of the occupier, and the enforcement powers under clause 260, when they have reasonable grounds to believe there is evidence on the premises and they have a warrant allowing them to enter without permission.

Clause 257 Inspector may board a vessel without consent or warrant

This clause provides that a person appointed by AMSA can board and exercise the monitoring powers under clause 259 to find out whether this Act is being complied with or to assess the correctness of information provided in relation to the Act. The power to board a vessel without warrant or consent is considered crucial for AMSA's role as regulator in undertaking both Port State and Flag State Control inspections. The vast majority of AMSA functions rely on this power in the first instance and this clause replicates the existing powers granted to appointed surveyors in the 1912 Act.

The clause requires the inspector to produce proper identification if so requested by the ships master. If the inspector is unable to produce the identification they are required to leave the vessel. The clause limits jurisdiction over foreign vessels in line with the limits of a coastal State's powers under the International Convention on the Law of the Sea.

Clause 258 Requirement to facilitate boarding of vessels

This clause requires any of the crew to facilitate boarding and not to impede the inspector, as well as creating an offence for failing to comply with the requirement.

The purpose of this clause is to enable inspectors to easily board and inspect a vessel whenever necessary to ensure its compliance with the Bill.

A similar provision can be found in subsection 184A(12) of the *Customs Act 1901*, which has a maximum penalty of two years imprisonment for non-compliance (see also subsection 84(1) of the *Fisheries Management Act 1991*).

Clause 259 Monitoring powers of inspectors

This clause sets the monitoring powers of an inspector, for example to search, observe, photograph, inspect and copy documents, to take aboard necessary equipment and to request a demonstration of any machinery. These powers extend to requiring the master to manoeuvre the vessel, check electronic equipment and the information contained on it and produce or copy any material relevant to ensuring compliance with this Bill either where the copying equipment is brought on board or the owner agrees to its use in writing.

If the monitoring power is exercised under a warrant and the inspector believes there are reasonable grounds that evidence of an offence against the Bill needs to be secured urgently, he or she can do so for 24 hours and apply to a magistrate to extend this period as required. The inspector must give notice to the occupier of the premises that he or she intends to apply for an extension.

Clause 260 Enforcement powers of inspectors

This clause sets out the enforcement powers of inspectors in relation to the premises entered under clause 256. It includes powers to:

1. Search, with the occupiers consent, for evidence the inspector has reasonable grounds may be present;
2. Search, under a warrant, for evidence specified in the warrant and seize it if found;
3. Inspect and undertake measurements or tests on evidential material;
4. Take pictures;
5. Take whatever necessary equipment is required on board to undertake the enforcement requirements.

Inspectors may also require a master to manoeuvre the vessel, operate equipment or check its operation and connectivity. Under a warrant they may also seize equipment and storage devices provided it is not practical to put the evidentiary material in documentary form or transfer it to other record; operate equipment to copy evidentiary material provided there are reasonable grounds to believe the operation can be carried out without damage and, where the inspector believes it necessary to seize material to prevent its loss or destruction, do so.

Clause 261 Persons assisting inspectors

This clause provides that if it is necessary and reasonable, inspectors may be assisted by other people when performing their functions and duties. Someone who helps an inspector in the exercise of their functions and duties is described as a ‘person assisting’ the inspector.

A person who assists an inspector can enter premises and act in all of the roles of an inspector, including exercise of powers and performance of functions and duties in relation to evidence, but can only do so when instructed or directed by an inspector.

Clause 262 Use of force in executing a warrant

This clause provides that an inspector or a person assisting them may use force in executing a warrant. The use of force allowed by an inspector is only to be exercised against things, for example in order to open a door or force a lock. The force allowed is limited to that which is necessary and reasonable in the circumstances.

Force cannot be used against a person or persons.

This clause is similar to existing Commonwealth legislative provisions that can be found in section 70 of the *National Vocational Education and Training Regulator Act 2010* which allows the use of force against things by authorised officers and persons assisting when executing a warrant under that Act.

Division 3—Other powers of inspectors

Clause 263 Power to require persons to answer questions and produce documents

This clause outlines the extent of an inspector's powers to ask questions and seek production of documents. It makes it an offence not to comply with a request to answer a question or produce a document that is made by an inspector who enters premises with a warrant.

If an inspector enters premises with the occupier's permission, the inspector is permitted to ask the occupier to answer questions and produce documents that relate to the inspector's reasons for entering the premises. However, as the inspector's right to be present on the premises is based on the consent of the occupier, it is not an offence to refuse to comply with an inspector's request.

If the inspector enters premises under a warrant, he or she may require any person on the premises to answer any questions or produce any documents that relate to the inspector's reasons for entering the premises. A person who fails to comply with any such request will have committed an offence. Similar provisions can be found in s150(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and s.134 of the *Education Services for Overseas Students Act 2000*.

Clause 264 Inspector may give directions

Under this clause an inspector may give directions, by written notice, to someone not complying with this Bill to so comply in order to protect the health and safety of people or to protect the environment. These directions must take into account certain criteria relating to the risk of non compliance, for example severity of the non compliance, record of the person, other means to ensure compliance and desirability of deterring someone from a repeat offence.

The clause creates an offence for failing to comply with a notice within a (reasonable) time specified in the notice and enables an inspector to arrange for the steps necessary to ensure compliance if no action is taken by the person served with the notice. AMSA may recover the costs of the arrangements made through a court. A similar power is provided for by section 146 of the *Gene Technology Act 2000*.

Clause 265 Inspector may give improvement notices

This clause enables an inspector to issue an improvement notice if there is contravention, or likely contravention of the Bill. The notice must include the contravention and the (reasonable) time period allowed together with any action the person is required to take during the period of the notice to ensure compliance. The inspector may extend the notice

period. The power to issue improvement notices has for many years been a fundamental tool used by inspectors to achieve compliance with safety laws. For example, a similar power to issue improvement notices can be found in section 98 of the *Occupational Health and Safety (Maritime Industry) Act 1993*.

Clause 266 Person must comply with improvement notice

This clause creates an offence for failing to comply with a notice issued under clause 265, to the extent that the action required is under the recipient's control.

Clause 267 Inspector may give prohibition notices

These clauses enable an inspector to issue prohibition notices to the master, owner or other 'responsible person' of a vessel where there is a serious risk to health or safety. The notice must specify in the inspector's opinion what the risk is, his or her reasons and direct the responsible person to desist from the activity or ensure it is not undertaken in a specified manner. The clause sets out a description of what is meant by "specified manner", and enables the notice to be lifted when no longer required because specified remedial action has been taken. A similar power relating to prohibition notices is in section 93 of the *Occupational Health and Safety (Maritime Industry) Act 1993*.

Clause 268 Person must comply with prohibition notice

This clause creates an offence for failing to comply with a notice issued under clause 267.

Clause 269 Display and distribution of copies of notices

This clause requires the inspector to give a copy of the notice to the master and registered owner of the vessel and the recipient of the notice to display it prominently on the vessel.

Clause 270 Notices not to be tampered with or removed

This clause prohibits anyone from tampering with the notice and creates an offence for doing so.

Division 4—Obligations and incidental powers of inspectors

Clause 271 Consent

This clause outlines the conditions that apply when an occupier of premises gives consent to an inspector seeking to enter and search the premises without a warrant.

The inspector must tell the occupier that they may refuse consent, and must not coerce the occupier into giving consent, as the consent has no effect unless it is voluntary. The occupier can limit their consent to a particular period.

The inspector and anyone assisting them can enter the premises until a consent period ends, or until consent is withdrawn. They must leave once consent is withdrawn or, if consent is given for a particular period of time, at the end of that time. If consent is given without any limitations, it will continue to have effect until it is withdrawn.

Clause 272 Announcement before entry under warrant

This clause outlines what an inspector must do before entering premises under a warrant.

The inspector must:

- announce that they are authorised to enter the premises;
- show their identity card to the occupier or to anyone else who represents the occupier, if they are present; and
- give the occupier or their representative an opportunity to allow entry to the premises.

If the inspector believes on reasonable grounds that the safety of a person or the effective execution of the warrant cannot be ensured if they comply with these requirements, they need not comply. However, if the inspector enters premises without complying with the normal requirements then they are required to show the occupier their identity card as soon as practicable after entering the premises.

Clause 273 Inspector to be in possession of warrant

This clause provides that the inspector who is executing the warrant must have the warrant or the form of warrant in their possession when they enter premises.

Clause 274 Details of warrant etc. to be given to occupier

This clause provides that when a warrant is executed on premises and the occupier or their representative is present, the inspector is required to give the occupier or their representative a copy of the warrant (or the form of warrant) and inform the occupier of their rights and responsibilities.

Clause 275 Completing execution of warrant after temporary cessation

This clause provides that, when an inspector and persons assisting them to execute a warrant leave the premises temporarily, the inspector can only complete the execution of the warrant if they are absent from the premises for no more than one hour, or if they are absent from the premises for no more than 12 hours due to an emergency, or if the occupier gives written consent.

However, the inspector can apply to an issuing officer for extension of the 12 hour period if there is an emergency situation and the inspector will not be able to return to the premises for more than 12 hours. Where practicable, the inspector must notify the occupier of the premises that they intend to apply for the extension before doing so.

On request, an issuing officer can permit the extension if they are satisfied that there are exceptional circumstances, but only when the extension will operate within the period the warrant is in force.

Clause 276 Completing execution of warrant stopped by court order

This clause provides that if the execution of a warrant is stopped by an order of the Court, the execution can go ahead if the Court order is later revoked or reversed and the warrant is still in force at that time.

Clause 277 Expert assistance to operate electronic equipment

This clause applies to situations where expert assistance is required to operate electronic equipment that an inspector believes on reasonable grounds may contain evidence; and the evidence may be destroyed, altered or otherwise interfered with if it is not retrieved.

This clause provides that an inspector may secure the electronic equipment for up to 24 hours, after giving the occupier or a representative notice of their intention to do so. The equipment may only be secured until the expert has operated the equipment, but may not be secured for more than 24 hours.

The inspector may apply to an issuing officer for an extension to secure the electronic equipment for more than 24 hours, but must give notice to the occupier or a representative of their intention to do so. This is so that the occupier or representative has an opportunity to challenge the application.

Clause 278 Compensation for damage to electronic equipment

This clause provides that if insufficient care by the inspector or persons assisting causes damage to electronic equipment or to the data and programs on the electronic equipment, during the course of the equipment being operated, the Commonwealth must pay reasonable compensation to the owner or user, as agreed.

If the Commonwealth and the owner of the equipment, data or programs fail to agree, the owner may take proceedings in a court to gain reasonable compensation.

Division 5—Occupier’s rights and responsibilities

This Division sets out the rights and responsibilities that are applicable to the occupier of premises that are searched.

Clause 279 Occupier entitled to observe execution of warrant

This clause provides that an occupier or their representative may remain and observe the execution of a warrant, as long as they do not impede the execution of the warrant.

Clause 280 Occupier to provide inspector with facilities and assistance

This clause creates an offence for the occupier or their representative if they fail to provide all reasonable assistance to effectively exercise their powers and perform their functions and duties.

Division 6—General provisions relating to seizure

The clauses in this Division address the conduct that may be undertaken in relation to items that are seized, including circumstances in which copies and receipts must be provided for seized goods, and circumstances in which items must be returned. Other examples of Commonwealth provisions similar to the provisions in this Division include section 70A of the *National Health Security Act 2007* and section 68 of the *National Vocational Education Training Regulator Act 2011*.

Clause 281 Copies of seized things to be provided

This clause provides that where an inspector, while executing a warrant, seizes anything that can be readily copied, or a storage device that contains information that can be readily copied, the occupier or a person representing them can request a copy of the seized information or items. Unless possession of the information or the item would constitute an offence against a Commonwealth law, the inspector must provide copies to the occupier or their representative as soon as practicable.

Clause 282 Receipts for seized things

This clause requires that an inspector provide a receipt for items that are seized under a search warrant.

Clause 283 Return of seized things

This clause requires an inspector to take reasonable steps to return any seized items to the owner or the person they were seized from after 60 days, or sooner than 60 days when the reason for the seizure no longer exists or it is decided that the item will not be used in evidence. If proceedings are instituted and not completed before the 60 days the item does not need to be returned until the reason for the seizure no longer exists or it is decided the item will not be used in evidence.

However, the item does not need to be returned when a court order requires otherwise, if the item is forfeited or forfeitable to the Commonwealth, or when there is a dispute about the ownership of the item.

This clause is designed to be consistent with the principles discussed in Part 9.9 of the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. The retention period of 60 days is specified in order to ensure that seized goods are not held for long periods of time without good reason.

Clause 284 Magistrate may permit a thing to be retained

This clause provides that an inspector may apply to a magistrate for an extension of the period for retention of seized goods, if the goods need to be kept.

On application from an inspector, a magistrate can permit a seized item to be kept for the purposes of legal proceedings that have not started if it is necessary that it be retained for the purposes of investigation or proceedings. The Magistrate can specify that the item be kept for a further period, but no longer than three years.

Before making an application, the inspector must attempt to find and notify each person who has an interest in the retention of the item.

Clause 285 Disposal of things

This clause provides that AMSA can dispose of anything that has been seized in any way they think appropriate, once they have taken reasonable steps to return the item and either the person refused to take possession of the item, or AMSA was unable to locate the person.

Division 7—Warrants

This Division outlines the criteria and circumstances that must be met for a warrant to be issued.

Clause 286 Monitoring warrants

This clause sets out the requirements that must be met by an inspector in order to satisfy a magistrate that it is necessary to issue a warrant to undertake checks that the Act has been complied with or that information provided is correct.

Clause 287 Enforcement warrants

This clause sets out the requirements that must be met by an inspector in order to satisfy a magistrate that it is necessary to issue a warrant in order to gather evidential materials that relate to breaches of the Act within 72 hours of the issue of the warrant.

Clause 288 Enforcement warrants by telephone, fax etc.

These provisions set out a procedure under which an inspector can apply for different types of warrant by telephone, fax or other electronic means in an urgent case, or if the delay to make an application in person would frustrate the effective execution of the warrant.

Under This clause, the requirement for the inspector to prepare evidence and information to support the issuing of a warrant is preserved, including the requirement that there are reasonable grounds for suspecting that there is evidential material on the premises, or that there may be within 72 hours. The inspector may be required to give this evidence by telephone or other voice technology if it is practicable.

The magistrate can complete and sign a warrant, and must inform the inspector of that either by telephone, fax or other electronic means. The inspector must then complete a form of warrant in the terms that are communicated to them, and include the name of the magistrate and the time the original warrant was signed. The inspector must also send a copy of the form of warrant to the magistrate by the end of the day following the day the warrant is executed or ceases to be in force.

Where the word ‘sign’ is used in this clause, it is used as a verb and has its plain English meaning.

Clause 289 Offence relating to warrants by telephone, fax etc.

This clause provides that it is an offence for an inspector to falsely state the name of a magistrate as having signed a warrant, or to depart from the terms of the warrant signed by the magistrate. It is also an offence to execute or present a form of warrant that departs from the terms of a warrant signed by a magistrate, or to give to a magistrate a form of warrant that is not the form of warrant used to execute a search.

The penalty for any of the above conduct is imprisonment for two years. This penalty is in place to deter inspectors from false or improper execution of warrants.

Division 8—Powers of magistrates

Clause 290 Powers of magistrates

This clause clarifies that magistrates exercising functions or powers under this Part perform these functions or exercise these powers in a personal capacity and not as a court or a member of a court. This reflects the doctrine of *persona designata*, which holds that Parliament may confer a non-judicial function on a justice of a court constituted under Chapter III of the Constitution if the function is conferred on the justice as an individual rather than a member of the court. Due to the separation of powers doctrine, functions or powers are conferred on a voluntary basis and need not be accepted by the magistrate. Subclause (3) clarifies that magistrates acting *persona designata* are still entitled to the judicial immunity afforded to them as if they were exercising functions or powers as a court or a member of a court.

Part 5—Civil penalty supporting provisions

Division 1—Obtaining a civil penalty order

Clause 291 Civil penalty orders

This clause provides that within six years of an alleged contravention of the provisions of this Bill, the designated Authority may apply to the Federal Court for an order that a person who is alleged to have contravened a civil penalty provision of the 1912 Act pay a pecuniary penalty. It also details the various factors the court may take into account in determining the penalty.

Clause 292 Civil enforcement of penalty

This clause provides that a pecuniary penalty is a debt due to the Commonwealth. If a Court orders payment of a civil penalty, the Commonwealth may enforce the order.

Clause 293 Conduct contravening more than one civil penalty provision

This clause provides that where conduct contravenes two or more civil penalty provisions, proceedings may be instituted against any of those provisions but the person will only be liable for one pecuniary penalty in relation to the same conduct.

Clause 294 Multiple contraventions

This clause provides that the Federal Court can make one civil penalty order for multiple contraventions of a civil penalty provision, if each of the contraventions are founded on the same facts or form a series of contraventions of the same or similar character. The penalty in this case cannot be greater than the maximum total penalty that could be ordered if a separate civil penalty order were made for each contravention.

Clause 295 Proceedings may be heard together

This clause provides that the Federal Court can direct that more than one civil penalty proceeding be heard at the same time. Doing so may be in the interest of efficient use of the Court's time.

Clause 296 Civil evidence and procedure rules for civil penalty orders

This clause provides that the rules of evidence and procedure for civil matters apply to any proceedings for a civil penalty order in the Federal Court.

Division 2—Civil proceedings and criminal proceedings

Clause 297 Civil proceedings after criminal proceedings

This clause provides that where a person is convicted of a criminal offence for conduct under the Bill, a Court cannot make a civil penalty order for conduct that is the same or substantially the same.

Clause 298 Criminal proceedings during civil proceedings

This clause provides that, if criminal proceedings are underway or commence for an offence under the Bill, any proceedings for a civil penalty order against the same person and in relation to conduct that is the same or substantially the same, are stayed. The civil penalty proceedings can be resumed if the person is not convicted of the criminal offence.

Clause 299 Criminal proceedings after civil proceedings

This clause provides that criminal proceedings may be commenced regardless of whether a civil penalty order has been made against the same person for the same or substantially the same conduct.

Clause 300 Evidence given in civil proceedings not admissible in criminal proceedings

This clause provides that evidence given by an individual in civil penalty proceedings against them for conduct that is the same or substantially the same cannot be used in criminal proceedings. The provision does not apply in relation to criminal proceedings pursued for the falsity of any evidence given by the individual during civil penalty proceedings.

Division 3—Miscellaneous**Clause 301 Ancillary contravention of civil penalty provisions**

Clause 301 provides that anyone who:

1. attempts to contravene a civil penalty provision;
2. aids in, procures or induces a contravention;
3. is knowingly concerned in a contravention of a civil penalty; or
4. conspires with others to cause a contravention

will be taken to have contravened the provision.

Clause 302 Mistake of fact

Clause 302 provides that a person will not be liable for a penalty if they can show that they were under a mistaken but reasonable belief about the facts surrounding a contravention, and the correct understanding of the facts would not have led to a contravention.

Clause 303 State of mind

This clause provides that it is not necessary to prove a person's intention, knowledge, recklessness, negligence or any other state of mind in order to prove a contravention of a civil penalty provision.

Clause 304 Civil penalty provisions contravened by employees, agents or officers

This clause provides that a body corporate will be held responsible for elements of civil penalty provisions that are contravened by the employees, agents or officers of the body corporate, if those people are acting within the scope of their employment or authority at the time of the contravention.

Part 6—Infringement notices and voluntary enforceable undertakings**Clause 305 Regulations—infringement notices**

This clause enables regulations to be made to provide for an infringement notice scheme. Such a scheme allows a person who is alleged to have contravened a civil penalty provision to pay an amount of up to one fortieth of the maximum penalty a court might impose for that offence. The regulations will provide for a scheme that is consistent with the requirements of Part 6 of the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. Where a person does not pay the amount specified in an infringement notice, civil penalty proceedings may be commenced.

Clause 306 Acceptance of undertakings

Sub-clause (1) enables AMSA to accept written undertakings from a person that the person will do, or refrain from doing, something in order to comply with an offence provision or a civil penalty provision of the Bill. An undertaking may be accepted in relation to future conduct.

Sub-clause (2) provides that an undertaking under this clause must be expressed as an undertaking under this clause.

Sub-clause (3) provides that an acceptance of an undertaking by AMSA is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This is because This clause is merely declaratory of the law and is included to assist readers. It does not amount to an exemption from the *Legislative Instruments Act 2003*.

AMSA may cancel an undertaking by giving the person a notice and may publish a copy of the undertaking on its website.

307 Enforcement of undertakings

Clause 307 provides for circumstances where AMSA considers that an undertaking given by a person and accepted by AMSA has been subsequently breached. AMSA may apply to a court for an order directing compliance with the undertaking, or that the person pay an amount up to the amount of any financial benefit they have obtained from the breach that is reasonably attributable to the breach, directing them to compensate a third party and/or any other order considered appropriate by the court.

Chapter 9—Other matters

Part 1—Preliminary

Clause 308 Simplified outline of this Chapter

This clause outlines the various matters dealt with in this Chapter.

Part 2— The official logbook for a vessel

Clause 309 Keeping Official logbook

Sub-clause (1) provides for the master of a regulated Australian vessel to keep an official logbook in accordance with requirements of the regulations.

Sub-clause (2) provides that regulations may provide for the keeping of logbooks, including the official logbook, including what entries are to be made, the circumstances in which those entries are to be made, the time period within which the entries must be made and for them to be signed.

It is an offence to fail to keep or maintain the official logbook and a civil penalty also applies.

Clause 310 Offences relating to content of official logbook

This clause creates additional offences relating to the official logbook, including for destroying or mutilating the logbook, or an entry in it, rendering an entry illegible, or making a fraudulent entry.

Alternatively, a civil penalty may apply.

Clause 311 Retention of official logbook after removal from vessel

This clause imposes an obligation on the owner of a vessel, when the logbook is removed from the vessel, to retain it for a period of five years. It also creates an offence for failing to do so.

Alternatively, a civil penalty may apply.

Clause 312 Births, deaths etc.

This clause imposes an obligation on the master of a vessel to record in the official log book any birth of a child, any death or disappearance of any person, any injury or illness of a seafarer that prevent him or her from performing their duties and to give a written report as soon as practicable to persons specified in the regulations. A criminal offence applies for a contravention of these requirements. Alternatively, a civil penalty may apply.

Part 3—Administrative review

Clause 313 Review of decisions

This clause lists the various decisions made under the Bill that may be appealed to the Administrative Appeals Tribunal. Appeal by the Administrative Appeals Tribunal is merits review. Provision for merits review of an administrative decision is only available where statute law makes provision.

Judicial review is also available for error of law under the *Administrative Decisions (Judicial Review) Act 1977*.

Part 4—General provisions relating to certificates

The provisions of this Part are common provisions for certificates issued under the Bill.

Clause 314 Regulations may provide for particular matters relating to certificates

This clause is a regulation making power and enables regulations to be made in relation to many aspects of the application process for certificates under the Bill.

Under sub-clause (1), the regulations may specify who may apply for certificates, the forms to be used, the manner of applying, and the information or documents required to accompany the application.

Sub-clause (2) provides that regulations may require that particular information is to be verified by statutory declaration.

Sub-clause (3) lists additional matters for which the regulations may provide. These include the criteria of which the issuing bodies must be satisfied before giving a certificate, time limits for decisions on applications and the information to be included on certificates, the time certificates come into, and cease to have, effect. The regulations may also provide for conditions to which certificates are subject and those that may be imposed by issuing bodies.

Sub-clause (4) permits the criteria that may be prescribed for the purposes of sub-clause 314(3)(a) and the conditions that may be prescribed under sub-clause 314(3)(e) and (f) to relate to compliance with specified standards.

Sub-clause (5) provides that regulations may also make provision for renewal, suspension, transfer, surrender and for the making of reports and declarations by issuing bodies, inspectors, or other persons with particular relevant expertise.

Clause 315 AMSA may require delivery of revoked certificates

This clause enables AMSA to require the delivery to it of a certificate that was issued for a regulated Australian vessel that has been revoked. AMSA may detain the vessel until the certificate is delivered following the issue of a notice to the owner, agent or master.

Clause 316 Issue, variation and revocation of certificates by issuing bodies other than AMSA

Clause 316 provides that an issuing body issues, varies or revokes a certificate under the Bill on behalf of AMSA and may only vary or revoke a certificate that was issued by that issuing body.

Clause 317 Certificates to be made available

This clause creates a criminal offence where an owner or master of a vessel does not make available for inspection, by any person on board, AMSA, an inspector or an officer of Customs, a copy of any certificate given under the Act that relates to the vessel. A civil penalty is also available.

Clause 318 AMSA may request a foreign country to issue certificates

This clause allows AMSA, in certain circumstances, to ask the government of a foreign country to issue or endorse, or to authorise the issue or endorsing of a certificate relating to an Australian vessel. The circumstances are that the certificate sought to be issued or endorsed may be issued for a vessel registered in that country and corresponds or substantially corresponds with a certificate that may be issued under the Bill.

A certificate, so issued or endorsed, has effect for the Bill, as if it were issued or endorsed under the Bill.

Clause 319 Foreign countries may request AMSA to issue certificates

Clause 319 enables AMSA to issue a certificate to, and endorse a certificate for, a foreign registered vessel on behalf of the government of that country where the vessel is registered, at the request of the foreign country. These arrangements are used in exceptional circumstances and can negate the need for vessels to return to their flag State where a certificate needs to be issued.

Clause 320 AMSA may recognise certificates

Sub-clause (1) enables AMSA to recognise, in certain circumstances, by written instrument, a certificate, or a class of certificates, issued by a foreign country, or by a State or Territory, or under the Marine Safety (Domestic Commercial Vessel) National Law. Those circumstances are where the certificate, or the class, is the equivalent of a certificate that is prescribed by this Bill, or it is appropriate to recognise the certificate, or the class, as the equivalent of a prescribed certificate.

Sub-clause (2) provides that a certificate that is recognised under this clause is taken to be in force in relation to the vessel.

Conditions may be imposed on recognition under sub-clause (3) and, under sub-clause (4), the instrument ceases to have any effect if any such condition is contravened.

The instrument of recognition is not a legislated instrument for the purposes of the *Legislative Instruments Act 2003*. This is because this clause is merely declaratory of the law and is included to assist readers. It does not amount to an exemption from the *Legislative Instruments Act 2003*.

Part 5—Miscellaneous matters

Division 1—Offences and civil penalties relating to obstruction etc.

Clause 321 Obstructing or hindering AMSA

This clause creates an offence of obstructing or hindering AMSA, and persons acting for AMSA, in the performance of its statutory functions and powers under the Bill or other laws. Alternatively, a civil penalty may apply.

Clause 322 Damaging AMSA vessels or equipment

This clause creates an offence of damaging AMSA's vessels and equipment. Alternatively, a civil penalty may apply.

Division 2—Provisions relating to various legal matters

Clause 323 Presumption of jurisdiction

This clause applies a presumption under the Bill that it applies unless proven otherwise.

Clause 324 Immunity from suit

This clause provides protection from criminal or civil proceedings for AMSA and its staff and delegates and inspectors appointed under clause 254 of the Bill in relation to acts or omissions in the exercise of powers under the Bill.

Clause 325 Abolition of defence of common employment

This clause abolishes the defence of common employment where injury or damage is suffered by a seafarer caused by another person in the workplace. The doctrine of common employment allowed a defendant employer to rely on a defence, and so reduce his or her liability, to the effect that the injury or loss to an employee was caused by a fellow employee in the course of their common employment. The defence has been abolished in all jurisdictions in Australia. It is included in the Bill to ensure that the defence continues to be unavailable in areas offshore that are beyond the reach of State jurisdictions.

Clause 326 Civil liability in relation to a vessel under pilotage

This clause provides that a pilot who has the conduct of a vessel is subject to the authority of the master of the vessel and that the master is not relieved of responsibility for the conduct of the vessel's navigation simply because the vessel is under pilotage.

The master or owner of a vessel remains liable for loss or damage caused by the vessel or by a fault in the navigation of the vessel regardless of any law of the Commonwealth, a State or a Territory under which pilotage is compulsory.

Neither the pilot of a vessel, nor any pilotage provider responsible for providing the pilot's services, is liable in civil proceedings for loss or damage caused to or by the vessel because of their instructions, information or advice provided in good faith and in the course of the pilot's duty.

Clause 327 Service of summons

This clause provides that a summons or other document related to a proceeding under this Bill may be served on a seafarer by leaving it for the seafarer on the seafarer's vessel with the master or a person apparently in command of the vessel. This clause is intended to be additional to the provisions in the *Acts Interpretation Act 1901* relating to service.

Clause 328 Service of certain documents if no master

This clause provides alternative arrangements for delivery of a document or notice which is to be given to the master of a vessel under the Bill in circumstances where the vessel is in Australia and does not have a master. The document or notice may be given to the owner of the vessel in Australia or, if the owner is not in Australia, to an agent representing the owner who is in Australia.

Clause 329 Proceedings against the Crown

This clause provides that the Bill is not to be taken as authorising any proceedings against the property of the Commonwealth, or a State or Territory, for example in salvage proceedings, or for the arrest, detention or sale of a Government vessel as defined in clause 14 or cargo or other property belonging to the Commonwealth or a State or Territory. The clause also makes clear that nothing in the Bill gives any person a lien over any Government vessel, or the cargo or property of the Commonwealth, a State or Territory.

Clause 330 Compensation for acquisition of property or causing damage etc.

It is not anticipated that the Bill (or any instruments made under it) effects any acquisition of property other than on just terms contrary to paragraph 51(xxxi) of the Constitution. This clause is included out of an abundance of caution to ensure that an acquisition contrary to paragraph 51(xxxi) cannot take place. In any circumstance where an acquisition contrary to paragraph 51(xxxi) is effected, the relevant law or instrument does not apply.

Clause 331 Offences against certain provisions of Act and regulations

Section 19B of the *Crimes Act 1914* allows certain offenders to be discharged without proceeding to a conviction in certain circumstances, for example, where the offender is of a particular age or character, the offence is relatively trivial or was committed under extenuating circumstances. This clause provides that s 19B is not available to sentencing courts in cases involving the serious offences listed.

Clause 332 Physical elements of offences

This is a generic clause that applies to all offences in the Bill. It provides that, for the purposes of Chapter 2 of the Criminal Code (which sets out the principles of criminal responsibility in relation to Commonwealth offences), the physical elements of each offence in the Bill are set out in the sub-clause which provides for contravention.

Division 3—Alternative constitutional bases**Clause 333 Alternative constitutional bases**

This clause provides for continued operation of the Bill (or provisions of the Bill) in the event of a successful constitutional challenge. It sets out the various constitutional heads of power upon which the Bill can draw if its operation is expressly confined to acts or omissions under those constitutional powers.

Division 4—Exemption

Clause 334 Power of exemption

This clause provides the Minister and AMSA with the power to give exemptions from the operation of certain provisions of the Act or from the Act as a whole. This power is based on and modernises the power to grant exemptions in the 1912 Act.

Sub-clause (1) enables an exemption to be given for a vessel or class of vessels or a person or class of persons.

Sub-clause (2) provides that exemptions may relate to specified periods or voyages.

Sub-clause (3) provides that an exemption may be given subject to conditions.

Sub-clause (4) provides that an instrument of exemption is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This is because This clause is merely declaratory of the law and is included to assist readers. It does not amount to an exemption from the *Legislative Instruments Act 2003*.

Sub-clause (5) provides that an exemption may not be made that is inconsistent with Australia's obligations under international agreements.

Sub-clause (6) provides that an exemption may not be made by the Minister or AMSA unless they are first satisfied that the exemption will not jeopardise the safety of the vessel or people on board.

The instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and sub-clause (4) is included simply to assist readers.

Clause 335 Person must not contravene condition of exemption

Clause 335 prohibits a person from contravening a condition imposed by an instrument of exemption under the sub-clause 334(3) that applies to the person or to a vessel.

Division 5—Other matters

Clause 336 Publication of information about vessels

This clause enables AMSA to publish information that it obtains about vessels, usually during inspection and survey, provided it does not contravene the provisions of the *Privacy Act 1988*. Sub-clause (2) enables regulations to describe the manner in which the information is to be published, the nature of the information that will be published and the time or times at which publication will occur.

Clause 337 Penalty for receiving fees for supply of seafarers

This clause prohibits the imposition or collection of a fee by any person from an individual for finding employment for the individual as a seafarer on any vessel. This clause is based on and modernises an equivalent provision in the 1912 Act. Both criminal and civil penalties apply.

Clause 338 AMSA may approve form

This clause enables AMSA to approve forms for the purposes of the Bill.

Part 6—Regulations and other legislative instruments

Clause 339 General regulation making power

This clause is a general regulation making power. The inclusion of other clauses in the Bill providing for regulations to be made in relation to certain matters does not limit in any way the regulations which may be made under clause 339.

Sub-clause (1) allows for the Governor-General to make regulations prescribing matters

- that are required or permitted by the Bill to be prescribed; or
- that are necessary or convenient to be prescribed for carrying out or giving effect to the Bill.

Sub-clause (2) provides that regulations may be made about any of the matters listed in the sub-clause.

Sub-clause (3) makes additional provision for regulations about transitional matters.

Regulations may provide for certificates and agreements in force at the time of the repeal of the *Navigation Act 1912* to have effect as if they were issued under the new Act, and for things done under 1912 Act, or under regulations or instruments made under that Act, to have effect as if they were done under the new Act.

Sub-clause (4) provides that regulations may be made under this clause about vessels that are not regulated Australian vessels.

Clause 340 Regulation making power to implement Conventions

This clause enables the making of regulations to give effect to certain international Conventions to which Australia is a party. The inclusion of other clauses providing for regulations to be made in relation to certain matters does not limit in any way the regulations which may be made under clause 340.

Sub-clause (1) lists the Conventions for which regulations may be made.

Sub-clause (2) provides that regulations may be made under this clause about vessels that are not regulated Australian vessels as defined in clause 15 of the Bill. Where a Convention applies to vessels other than regulated Australian vessels, regulations under this clause may make provision in respect of them.

Clause 341 General provisions relating to regulations

Sub-clause (1) permits regulations to provide for penalties for contraventions of the regulations or of notices, orders, directions, or instructions given under the regulations. The penalties for such contraventions must not be more than 50 penalty units.

This sub-clause also permits the regulations to impose civil penalties for contraventions of the regulations. The civil penalties must not be more than 50 penalty units for individuals and 250 penalty units for a body corporate.

These lower penalties for contraventions of the regulations are appropriate given the nature of the regulations that could be made.

Sub-clause (1) also enables regulations to provide for the manner in which notices, orders, documents etc may be given, issued or notified. This sub-clause also enables the making of regulations charging fees in relation to any matters under the Bill.

Sub-clause (2) permits regulations made under the Bill to adopt, apply or incorporate any matter contained in another instrument or document, including with modifications as in force or existing at a particular time or as in force or existing from time to time. A document or instrument may be adopted, applied or incorporated even if the document or instrument is not in existence when the regulation comes into effect.

Sub-clause (3) enables regulations to be made vesting jurisdiction in a court in relation to matters under the regulations and may provide for review of decisions under the regulations.

Clause 342 Marine Orders

Sub-clause (1) allows AMSA to make Marine Orders by legislative instrument, in relation to any matter for which regulations may be made. AMSA is currently empowered to make Marine Orders in relation to matters in Part II, III, IIIA, IV, V, VA, VB or XA of the 1912 Act if regulations could be made on the matter. This is accepted practice with which the shipping industry is familiar and it is anticipated that the bulk of regulations on operational matters would continue to be in the form of marine orders.

Sub-clause (2) ensures that Marine Orders may not be made that are inconsistent with provisions of the Bill itself.

Sub-clause (3) provides that the reference to the Bill in that provision does not include marine orders.

Sub-clause (4) provides that orders may be made by incorporating matters set out in a document or instrument either as in force as at a particular time or as amended from time to time including a document or instrument that does not exist when the marine order comes into effect.

Marine Orders are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

Clause 343 Regulations and Orders under the *Navigation Act 1912*

Sub-clause (1) enables regulations to be made to provide that regulations made under the *Navigation Act 1912* and in force at repeal of that Act to continue to have effect as modified by the regulations made under this clause.

Sub-clause (2) enables marine orders to be made to provide that marine orders made under the *Navigation Act 1912* and in force at repeal of that Act to continue to have effect as modified by the marine orders made under this clause.