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## **Navigation Bill 2012**

**No.     , 2012**

*(Infrastructure and Transport)*

**A Bill for an Act relating to maritime safety and the  
prevention of pollution of the marine environment,  
and for related purposes**



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1     **A Bill for an Act relating to maritime safety and the**  
2     **prevention of pollution of the marine environment,**  
3     **and for related purposes**

4     The Parliament of Australia enacts:

5     **Chapter 1—Preliminary**

6     **Part 1—Short title and commencement**  
7

8     **1 Short title**

9             This Act may be cited as the *Navigation Act 2012*.

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1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table  
3 commences, or is taken to have commenced, in accordance with  
4 column 2 of the table. Any other statement in column 2 has effect  
5 according to its terms.

6

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 343	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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7 Note: This table relates only to the provisions of this Act as originally  
8 enacted. It will not be amended to deal with any later amendments of  
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.  
11 Information may be inserted in this column, or information in it  
12 may be edited, in any published version of this Act.

1 **Part 2—Objects and simplified outline of Act**  
2

3 **3 Objects of Act**

4 The objects of this Act are:

- 5 (a) to promote the safety of life at sea; and  
6 (b) to promote safe navigation; and  
7 (c) to prevent pollution of the marine environment; and  
8 (d) to ensure that AMSA has the necessary power to carry out  
9 inspections of vessels and enforce national and international  
10 standards.

11 **4 Simplified outline of this Act**

12 *Overview of this Act*

- 13 (1) This Act is about maritime safety, seafarers and the prevention of  
14 pollution of the marine environment. It provides for matters  
15 relating to the following:  
16 (a) seafarers (Chapter 2);  
17 (b) the safety of regulated Australian vessels and foreign vessels  
18 (Chapter 3);  
19 (c) prevention of pollution (Chapter 4);  
20 (d) tonnage (Chapter 5);  
21 (e) the safety of navigation (Chapter 6);  
22 (f) wrecks and salvage (Chapter 7);  
23 (g) complying with, and enforcing, this Act (Chapter 8);  
24 (h) other general matters that relate to the above (Chapter 9).

25 *Overview of the rest of this Chapter*

- 26 (2) The rest of this Chapter deals with:  
27 (a) the application of this Act, including how it interacts with  
28 certain State and Territory laws and its geographical  
29 application (Part 3); and  
30 (b) definitions that are used in this Act (Part 4); and

**Chapter 1** Preliminary

**Part 2** Objects and simplified outline of Act

Section 4

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1  
2  
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(c) provisions that enable a vessel that would not otherwise be a regulated Australian vessel to opt in to coverage (Part 5).

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

4 **5 Extension to Territories**

5 This Act extends to every external Territory.

6 **6 Extraterritorial operation of Act**

7 This Act applies both within and outside Australia.

8 **7 Act to bind the Crown**

9 (1) This Act binds the Crown in each of its capacities.

10 (2) Nothing in this Act makes the Crown liable to a pecuniary penalty  
11 or to be prosecuted for an offence.

12 **8 Geographical jurisdiction for offences**

13 Section 15.3 of the *Criminal Code* (extended geographical  
14 jurisdiction—category C) applies to all offences against this Act.

15 **9 Geographical application of offences and civil penalty provisions**  
16 **relating to foreign vessels, etc.**

17 Despite sections 6 and 8, the master or owner of a foreign vessel,  
18 or a recreational vessel that does not have Australian nationality,  
19 does not:

20 (a) commit an offence against this Act that relates to the vessel;

21 or

22 (b) contravene a civil penalty provision of this Act that relates to  
23 the vessel;

24 unless, at the time when the conduct constituting the alleged  
25 offence or contravention occurs, the vessel is:

26 (c) in an Australian port; or

27 (d) entering or leaving an Australian port; or

28 (e) in the internal waters of Australia; or

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1 (f) in the territorial sea of Australia, other than in the course of  
2 innocent passage.

3 Note: Certain provisions of this Act provide that this section does not apply  
4 to specified offences and civil penalty provisions.

5 **10 Act does not apply to naval vessels etc.**

6 This Act does not apply to, or in relation to:

- 7 (a) a warship or other vessel that:
- 8 (i) is operated for naval or military purposes by Australia  
9 or a foreign country; and
  - 10 (ii) is under the command of a member of the Australian  
11 Defence Force or of a member of the armed forces of  
12 the foreign country; and
  - 13 (iii) bears external marks of nationality; and
  - 14 (iv) is manned by seafarers under armed forces discipline  
15 (however described); or
- 16 (b) a Government vessel that is used only on government  
17 non-commercial service as a naval auxiliary; or
- 18 (c) a vessel used by a foreign country for customs or law  
19 enforcement purposes.

20 **11 Application of Act to certain customs vessels**

21 A customs vessel that would, apart from this section, not comply  
22 with a provision of Chapter 2, 3 or 6, or a person who would, apart  
23 from this section, not comply with a provision of those Chapters in  
24 relation to a customs vessel, is taken to comply with that provision  
25 if:

- 26 (a) there is a document (the *customs vessel management plan*)  
27 that:
- 28 (i) has been prepared, reviewed and accepted in accordance  
29 with the regulations; and
  - 30 (ii) relates to the customs vessel or person; and
  - 31 (iii) specifies requirements to be met by the customs vessel  
32 or the person in relation to that provision; and



- 1 (b) the customs vessel or the person complies with the  
2 requirements of the customs vessel management plan in  
3 relation to that provision.

4 **12 Provisions that give effect to various conventions**

5 A provision of this Act that gives effect to a provision of:

- 6 (a) the Safety Convention; or  
7 (b) the Prevention of Pollution Convention; or  
8 (c) the Prevention of Collisions Convention (in relation to an  
9 area other than the high seas);

10 does not apply in relation to a domestic commercial vessel, or a  
11 recreational vessel that has Australian nationality, when the vessel  
12 is in an area if:

- 13 (d) a provision of the Marine Safety (Domestic Commercial  
14 Vessel) National Law gives effect to that provision of the  
15 Convention in relation to that vessel when it is in that area; or  
16 (e) if paragraph (d) does not apply—a provision of a law of a  
17 State or the Northern Territory gives effect to that provision  
18 of the Convention in relation to that vessel when it is in that  
19 area.

20 **13 Provisions that give effect to the Container Convention**

21 (1) Regulations giving effect to the Container Convention do not apply  
22 in relation to a container in a State or in the Northern Territory to  
23 the extent that a law of that State or Territory, as the case may be,  
24 makes provision giving effect to that Convention in relation to that  
25 container.

26 (2) Structural safety requirements or tests that are not required or  
27 permitted by the Container Convention to be imposed on  
28 containers to which that Convention applies are not to be imposed  
29 by or under a law of a State or Territory on such containers.  
30

Section 14

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1 **Part 4—Interpretation**  
2

3 **14 Definitions**

4 (1) In this Act:

5 **accommodation** includes sleeping rooms, mess rooms, duty rooms,  
6 recreation facilities, storerooms, change rooms, lockers, galleys,  
7 refrigerating chambers, sanitary facilities, hospital accommodation,  
8 office accommodation and catering accommodation.

9 **agency:**

10 (a) of the Commonwealth, includes the following:

11 (i) an Agency within the meaning of the *Financial*  
12 *Management and Accountability Act 1997*;

13 (ii) a body corporate established for a public purpose by or  
14 under a law of the Commonwealth; and

15 (b) of a State or a Territory, includes the following:

16 (i) a Department of State (however described) of the State  
17 or Territory;

18 (ii) a body corporate established for a public purpose by or  
19 under a law of the State or Territory.

20 **aggravated contravention:** see section 144.

21 **aid to navigation** means:

22 (a) a lighthouse, lightship, beacon or buoy; or

23 (b) an electronic aid that is used as an aid to marine navigation,  
24 such as a meteorological or oceanographic sensor, satellite  
25 navigation system or global positioning system; or

26 (c) maritime communications equipment and infrastructure; or

27 (d) any other structure, mark, device or apparatus that is an aid to  
28 marine navigation;

29 but does not include any device or apparatus that forms part of the  
30 equipment of a vessel (unless the vessel is a lightship).

31 **alcohol test** means a test under section 78.

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1 **AMSA** means the Australian Maritime Safety Authority  
2 established by the *Australian Maritime Safety Authority Act 1990*.

3 **AMSA aid to navigation** means an aid to navigation that is owned  
4 or controlled by AMSA.

5 **approved form** means a form approved under section 338.

6 **article in the course of post** means an article that is being carried  
7 by or through the Australian Postal Corporation, and includes an  
8 article that has been collected or received by the Australian Postal  
9 Corporation for carriage by post, but has not been delivered by the  
10 Australian Postal Corporation.

11 **Australia** includes the external Territories.

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

15 **Australian Navy** has the same meaning as in the *Naval Defence*  
16 *Act 1910*.

17 **Australian port** means:

- 18 (a) an Australian port; or  
19 (b) a port in the Great Barrier Reef Region.

20 **cargo** of a vessel does not include ballast for the vessel or goods  
21 intended for consumption on the vessel.

22 Example: Ship's stores and fuel that are intended for consumption on the vessel  
23 are not cargo of the vessel.

24 **child** of a person includes a person who is a child of the person  
25 within the meaning of the *Family Law Act 1975*.

26 **civil penalty order**: see section 291.

27 **civil penalty provision** means a provision for whose contravention  
28 another provision states that a person is liable to a civil penalty.

29 **close quarters situation** means a situation in which vessels pass  
30 each other, or a vessel passes another vessel, a person or an object,

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1 in such proximity that a reasonable person would conclude that in  
2 all the circumstances there was a risk of an imminent collision.

3 **coastal sea** of Australia means:

- 4 (a) the territorial sea of Australia; and  
5 (b) the sea on the landward side of the territorial sea of Australia  
6 and not within the limits of a State or internal Territory;  
7 and includes the airspace over, and the sea-bed and subsoil  
8 beneath, any such sea.

9 **compulsory pilotage area**: see subsection 163(1).

10 **constable** has the meaning given by section 3 of the *Crimes Act*  
11 *1914*.

12 **container** has the same meaning as in the Container Convention.

13 **Container Convention** means the International Convention for  
14 Safe Containers, done at Geneva on 2 December 1972, as amended  
15 and in force for Australia from time to time.

16 Note: The text of the Convention is set out in Australian Treaty Series 1981  
17 No. 3 ([1981] ATS 3). In 2012, the text of a Convention in the  
18 Australian Treaty Series was accessible through the Australian  
19 Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

20 **customs vessel**: see section 17.

21 **dangerous goods** means the goods listed in the International  
22 Maritime Dangerous Goods Code.

23 **de facto partner** has the meaning given by the *Acts Interpretation*  
24 *Act 1901*.

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

27 **drug test** means a test under section 79.

28 **eligible court** means:

- 29 (a) the Federal Court of Australia; or  
30 (b) a court of a State or Territory that has jurisdiction in relation  
31 to matters arising under this Act.

1           **enforcement powers**: see section 260.

2           **enforcement warrant** means:

- 3           (a) a warrant issued under section 287; or  
4           (b) a warrant signed by a magistrate under section 288.

5           **evidential burden**, in relation to a matter, means the burden of  
6           adducing or pointing to evidence that suggests a reasonable  
7           possibility that the matter exists or does not exist.

8           **evidential material** means:

- 9           (a) in relation to an offence against this Act:  
10           (i) a thing with respect to which the offence has been  
11           committed or is suspected, on reasonable grounds, of  
12           having been committed; or  
13           (ii) a thing that there are reasonable grounds for suspecting  
14           will afford evidence as to the commission of the  
15           offence; or  
16           (iii) a thing that there are reasonable grounds for suspecting  
17           is intended to be used for the purpose of committing the  
18           offence; and  
19           (b) in relation to a contravention of a civil penalty provision:  
20           (i) a thing with respect to which the civil penalty provision  
21           has been contravened or is suspected, on reasonable  
22           grounds, of having been contravened; or  
23           (ii) a thing that there are reasonable grounds for suspecting  
24           will afford evidence as to the contravention of the civil  
25           penalty provision; or  
26           (iii) a thing that there are reasonable grounds for suspecting  
27           is intended to be used for the purpose of contravening  
28           the civil penalty provision.

29           **foreign vessel** means a vessel:

- 30           (a) that does not have Australian nationality; and  
31           (b) that is not a recreational vessel.

32           **Government vessel** means a vessel:

- 33           (a) that belongs to the Commonwealth or a State or Territory or  
34           an agency of the Commonwealth or a State or Territory; or

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- 1 (b) the beneficial interest in which is vested in the  
2 Commonwealth or a State or Territory or an agency of the  
3 Commonwealth or a State or Territory; or  
4 (c) that is for the time being demised or sub-demised to the  
5 Commonwealth or a State or Territory or an agency of the  
6 Commonwealth or a State or Territory.

7 ***Great Barrier Reef Region*** has the same meaning as in the *Great*  
8 *Barrier Reef Marine Park Act 1975*.

9 ***harbour*** means a natural or artificial harbour, and includes:

- 10 (a) a navigable estuary, river, creek or channel; or  
11 (b) a haven, roadstead, dock, pier, jetty or offshore terminal; or  
12 (c) any other place in or at which vessels can obtain shelter or  
13 load and unload goods or embark and disembark passengers.

14 ***historic wreck*** means:

- 15 (a) a historic shipwreck within the meaning of the *Historic*  
16 *Shipwrecks Act 1976*; or  
17 (b) a historic relic within the meaning of that Act.

18 ***home port*** of a seafarer means:

- 19 (a) the port specified in the seafarer's work agreement as the  
20 home port of the seafarer; or  
21 (b) if there is no home port of the seafarer specified in a work  
22 agreement—the port at which the seafarer embarked.

23 ***improvement notice*** means a notice given under section 265.

24 ***inspector*** means a person appointed as an inspector under  
25 subsection 254(1).

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

28 ***International Maritime Dangerous Goods Code*** means the  
29 International Maritime Dangerous Goods Code issued by the  
30 International Maritime Organization, as in force from time to time.

1            ***International Tonnage Certificate (1969)*** means a certificate in  
2            the form of the International Tonnage Certificate (1969) set out in  
3            Annex II to the Tonnage Convention.

4            ***issuing body*** means AMSA or a recognised organisation.

5            ***length overall***, of a vessel, has the meaning given by section 20.

6            ***licensed pilot*** means a person who is licensed as a pilot under  
7            regulations made for the purposes of Part 2 of Chapter 6.

8            ***Limitation of Liability for Maritime Claims Convention*** means  
9            the Convention on Limitation of Liability for Maritime Claims,  
10           done at London on 19 November 1976, as amended and in force  
11           for Australia from time to time.

12           Note:        The text of the Convention is set out in Australian Treaty Series 1991  
13                  No. 12 ([1991] ATS 12). In 2012, the text of a Convention in the  
14                  Australian Treaty Series was accessible through the Australian  
15                  Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

16           ***Load Lines Convention*** means the International Convention on  
17           Load Lines, done at London on 5 April 1966, as amended and in  
18           force for Australia from time to time.

19           Note:        The text of the Convention is set out in Australian Treaty Series 1968  
20                  No. 23 ([1968] ATS 23). In 2012, the text of a Convention in the  
21                  Australian Treaty Series was accessible through the Australian  
22                  Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

23           ***make fast*** to an object means use the object as a mooring.

24           ***mandatory ship routeing system*** means a ship routeing system that  
25           is:

26                  (a) adopted or mandated by the International Maritime  
27                  Organization; and

28                  (b) prescribed by the regulations;

29           as in force from time to time.

30           ***marine incident*** means any of the following:

31                  (a) a death of, or injury to, a person associated with the operation  
32                  or navigation of a vessel;

33                  (b) the loss or presumed loss of a vessel;

34                  (c) a collision of a vessel with another vessel;

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- 1 (d) a collision of a vessel with an object;  
2 (e) the grounding, sinking, flooding or capsizing of a vessel;  
3 (f) a fire on board a vessel;  
4 (g) a loss of stability of a vessel that affects the safety of the  
5 vessel;  
6 (h) the structural failure of a vessel;  
7 (i) a close quarters situation;  
8 (j) an event that results in, or could have resulted in:  
9 (i) the death of, or injury to, a person on board a vessel; or  
10 (ii) the loss of a person from a vessel; or  
11 (iii) a vessel becoming disabled and requiring assistance;  
12 (k) the fouling or damaging by a vessel of:  
13 (i) any pipeline or submarine cable; or  
14 (ii) any aid to navigation;  
15 (l) an incident that is prescribed by the regulations and involves  
16 a vessel.

17 **Marine Order:** see section 342.

18 **Marine Safety (Domestic Commercial Vessel) National Law** has  
19 the meaning given by section 17 of the *Marine Safety (Domestic*  
20 *Commercial Vessel) National Law Act 2012*.

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

23 **member of a person's family** includes the following:

- 24 (a) a de facto partner of the person;  
25 (b) a child of the person;  
26 (c) a parent, grandparent, grandchild or sibling of the person.

27 **monitoring powers** has the meaning given by section 259.

28 **monitoring warrant** means a warrant issued under section 286.

29 **nautical publication** includes the following:

- 30 (a) sailing directions;  
31 (b) lists of lights;  
32 (c) notices to mariners;



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(d) tide tables.

***navigates without a licensed pilot*** has the meaning given by section 21.

***non-Convention tonnage certificate*** means a tonnage certificate other than an International Tonnage Certificate (1969).

***non-Tonnage Convention vessel*** means a vessel to which the Tonnage Convention does not apply.

***officer*** means the master, mate or engineer of a vessel.

***officer of Customs*** means an Officer of Customs within the meaning of the *Customs Act 1901*.

***official logbook*** means a logbook kept in accordance with regulations made for the purposes of section 309.

***operate*** a vessel means:

- (a) determine or exercise control over the course or direction of the vessel or over the means of propulsion of the vessel, whether or not the vessel is underway; or
- (b) load or unload the vessel when it is moored or berthed.

***opt-in declaration***, in relation to a vessel, means a declaration under subsection 25(2) in relation to the vessel.

***overloaded***, in relation to a vessel, has the meaning given by regulations made for the purposes of paragraph 113(a).

***overseas voyage***: see section 16.

***owner*** of a vessel means one or more of the following:

- (a) a person who has a legal or beneficial interest in the vessel, other than as a mortgagee;
- (b) a person with overall general control and management of the vessel;
- (c) a person who has assumed responsibility for the vessel from a person referred to in paragraph (a) or (b).

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1 For the purposes of paragraph (b), a person is not taken to have  
2 overall general control and management of a vessel merely because  
3 he or she is the master or pilot of the vessel.

4 **passenger** means a person carried on board a vessel with the  
5 knowledge or consent of the owner of the vessel or his or her  
6 representative, or of the charterer or master of the vessel, other  
7 than:

8 (a) a person employed or engaged in any capacity on board the  
9 vessel on the business of the vessel; or

10 (b) a person on board the vessel:

11 (i) under an obligation imposed on the master by any law  
12 (including a law of a country other than Australia) to  
13 assist shipwrecked, distressed or other persons; or

14 (ii) because of circumstances that could not have been  
15 prevented by the owner, charterer, agent or master of the  
16 vessel; or

17 (c) a child under the age of 1 year; or

18 (d) if the vessel is a special purpose vessel—special personnel in  
19 relation to the vessel.

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

22 **pilotage provider** includes a person who is responsible for the  
23 following:

24 (a) training pilots;

25 (b) the safe transfer and operation of pilots;

26 (c) assigning or allocating a pilot to the transit of a vessel  
27 through particular waters;

28 (d) undertaking such other activities in relation to pilotage as are  
29 prescribed by the regulations;

30 irrespective of the legal relationship, contractual or otherwise,  
31 between that person and the pilot concerned.

32 **pollution certificate** means a certificate issued under section 132.

33 **port** includes a harbour.

1            **PPSA security interest** means a security interest within the  
2            meaning of the *Personal Property Securities Act 2009*.

3            **premises** includes the following:

- 4            (a) a structure, building, vehicle or vessel;  
5            (b) a place (whether or not enclosed or built upon);  
6            (c) a part of premises (including premises of a kind referred to in  
7            paragraph (a) or (b)).

8            **Prevention of Collisions Convention** means the Convention on the  
9            International Regulations for Preventing Collisions at Sea, done at  
10           London on 20 October 1972, as amended and in force for Australia  
11           from time to time.

12           Note:        The text of the Convention is set out in Australian Treaty Series 1980  
13                      No. 5 ([1980] ATS 5). In 2012, the text of a Convention in the  
14                      Australian Treaty Series was accessible through the Australian  
15                      Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

16           **Prevention of Pollution Convention** has the same meaning as *the*  
17           **Convention** has in the *Protection of the Sea (Prevention of*  
18           *Pollution from Ships) Act 1983*.

19           **proceeding on a voyage**: a vessel is taken to be **proceeding on a**  
20           **voyage** from the time when it is got underway for the purpose of  
21           proceeding on the voyage until the time when it is got underway  
22           for the purpose of proceeding on another voyage.

23           **prohibition notice** means a notice given under section 267.

24           **Protected Zone** means the zone that is:

- 25           (a) established under Article 10 of the Treaty between Australia  
26                      and the Independent State of Papua New Guinea concerning  
27                      Sovereignty and Maritime Boundaries in the area between  
28                      the two Countries, including the area known as Torres Strait,  
29                      and Related Matters, done at Sydney on 18 December 1978,  
30                      as amended and in force for Australia from time to time; and  
31           (b) the area bounded by the line described in Annex 9 to that  
32           Treaty.

33           Note:        The text of the Treaty is set out in Australian Treaty Series 1985 No. 4  
34                      ([1985] ATS 4). In 2012, the text of a Treaty in the Australian Treaty  
35                      Series was accessible through the Australian Treaties Library on the  
36                      AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

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1                    **recognised organisation** means an organisation that is prescribed  
2                    by the regulations for the purposes of this definition.

3                    **record of service** means a record of service, however described,  
4                    and includes articles of agreement.

5                    **recreational vessel** means a vessel that is not for use in connection  
6                    with a commercial, governmental or research activity.

7                    Note:            A recreational vessel can include a vessel that does not have  
8                    Australian nationality.

9                    **regulated Australian vessel**: see section 15.

10                  **ride by** an object means go close to the object in such a way as to  
11                  create a significant wash that affects the object.

12                  **safety certificate** means a certificate issued under section 100.

13                  **Safety Convention** means the International Convention for the  
14                  Safety of Life at Sea, done at London on 1 November 1974, as  
15                  amended and in force for Australia from time to time.

16                  Note:            The text of the Convention is set out in Australian Treaty Series 1983  
17                  No. 22 ([1983] ATS 22). In 2012, the text of a Convention in the  
18                  Australian Treaty Series was accessible through the Australian  
19                  Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

20                  **Salvage Convention** means the International Convention on  
21                  Salvage, done at London on 28 April 1989, as amended and in  
22                  force for Australia from time to time.

23                  Note:            The text of the Convention is set out in Australian Treaty Series 1998  
24                  No. 2 ([1998] ATS 2). In 2012, the text of a Convention in the  
25                  Australian Treaty Series was accessible through the Australian  
26                  Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

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

31                  **seafarer** means any person who is employed or engaged or works  
32                  in any capacity (including that of master) on board a vessel on the  
33                  business of the vessel, other than the following:

34                    (a) a licensed pilot of the vessel (acting as such a pilot);

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- 1 (b) an owner of the vessel or a person (except the master)  
2 representing the owner;  
3 (c) law enforcement personnel (in their capacity as law  
4 enforcement personnel);  
5 (d) if the vessel is a special purpose vessel—special personnel in  
6 relation to the vessel;  
7 (e) a person temporarily employed on the vessel in port;  
8 (f) a person prescribed by the regulations.

9 ***seafarer certificate*** means a certificate issued under section 31.

10 ***seafarer's vessel*** means the vessel on which the seafarer concerned  
11 is employed, is engaged or works.

12 ***seaworthy***: see section 23.

13 ***special personnel***, in relation to a special purpose vessel, means a  
14 person who is carried on board the vessel in connection with the  
15 special purpose of the vessel.

16 ***special purpose vessel***: see section 18.

17 ***STCW Convention*** means the International Convention on  
18 Standards of Training, Certification and Watchkeeping for  
19 Seafarers, done at London on 7 July 1978, as amended and in force  
20 for Australia from time to time.

21 Note: The text of the Convention is set out in Australian Treaty Series 1984  
22 No. 7 ([1984] ATS 7). In 2012, the text of a Convention in the  
23 Australian Treaty Series was accessible through the Australian  
24 Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

25 ***substandard***: see section 24.

26 ***taken to sea***: see section 22.

27 ***this Act*** includes regulations and other legislative instruments  
28 made under this Act.

29 ***tonnage certificate*** means a certificate issued under section 155.

30 ***Tonnage Convention*** means the International Convention on  
31 Tonnage Measurement of Ships, done at London on 23 June 1969,  
32 as amended and in force for Australia from time to time.

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1 Note: The text of the Convention is set out in Australian Treaty Series 1982  
2 No. 15 ([1982] ATS 15). In 2012, the text of a Convention in the  
3 Australian Treaty Series was accessible through the Australian  
4 Treaties Library on the AustLII website (www.austlii.edu.au).

5 ***unclaimed wreck*** means any wreck in respect of which no claim  
6 has been made during the period of a year beginning when AMSA  
7 first publishes a notice under section 234 in relation to the wreck.

8 ***United Nations Convention on the Law of the Sea*** means the  
9 United Nations Convention on the Law of the Sea, done at  
10 Montego Bay on 10 December 1982, as amended and in force for  
11 Australia from time to time.

12 Note: The text of the Convention is set out in Australian Treaty Series 1994  
13 No. 31 ([1994] ATS 31). In 2012, the text of a Convention in the  
14 Australian Treaty Series was accessible through the Australian  
15 Treaties Library on the AustLII website (www.austlii.edu.au).

16 ***vessel*** means any kind of vessel used in navigation by water,  
17 however propelled or moved, and includes the following:

- 18 (a) a barge, lighter or other floating craft;  
19 (b) an air-cushion vehicle, or other similar craft, used wholly or  
20 primarily in navigation by water.

21 ***vessel traffic service*** means a navigational service implemented  
22 under a law of the Commonwealth or of a State or Territory and in  
23 accordance with guidelines for vessel traffic services adopted by  
24 the International Maritime Organization on 27 November 1997 to  
25 improve the safety and efficiency of vessel traffic and to protect  
26 the environment, as in force from time to time.

27 ***vessel traffic service authority*** means an entity authorised by  
28 AMSA to provide a vessel traffic service.

29 ***warrant*** means a monitoring warrant or an enforcement warrant.

30 ***work agreement*** means an agreement that is made between a  
31 seafarer and the owner of the seafarer's vessel.

32 ***wreck*** includes:

- 33 (a) a vessel that is wrecked, derelict, stranded, sunk or  
34 abandoned or that has foundered; and

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- 1 (b) any thing that belonged to or came from a vessel mentioned  
2 in paragraph (a); and  
3 (c) any thing that belonged to or came from a vessel in distress;  
4 and  
5 (d) jetsam, flotsam and lagan.
- 6 (2) A reference in this Act to failure to do an act or thing includes a  
7 reference to refusing or neglecting to do that act or thing.

8 **15 Definition of *regulated Australian vessel***

- 9 (1) A vessel is a ***regulated Australian vessel*** if:  
10 (a) under the *Shipping Registration Act 1981*, the vessel is  
11 registered, required to be registered or exempt under  
12 section 13 of that Act from that requirement; and  
13 (b) the vessel is not a recreational vessel; and  
14 (c) any of the following apply:  
15 (i) the vessel is proceeding on an overseas voyage or is for  
16 use on an overseas voyage;  
17 (ii) a certificate issued under this Act, other than a  
18 non-Convention tonnage certificate or a certificate  
19 prescribed by the regulations, is in force for the vessel;  
20 (iii) an opt-in declaration is in force for the vessel.
- 21 (2) A vessel is a ***regulated Australian vessel*** if the vessel is a customs  
22 vessel.
- 23 (3) A vessel referred to in subparagraph (1)(c)(i) or (ii) is not a  
24 regulated Australian vessel if a declaration under section 19 is in  
25 force for the vessel.
- 26 (4) A vessel in the course of construction is a ***regulated Australian***  
27 ***vessel*** if the vessel is, after completion, for use as a vessel referred  
28 to in subparagraph (1)(c)(i) or subsection (2).
- 29 (5) For the purposes of subsection (4), a vessel that has been launched,  
30 but has not been completed and delivered, is taken to be a vessel in  
31 the course of construction.

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1 **16 Definition of *overseas voyage***

- 2 (1) A vessel's voyage is an *overseas voyage* if in the course of the  
3 voyage the vessel is present in waters outside the outer limits of the  
4 exclusive economic zone of Australia.
- 5 (2) Despite subsection (1), a vessel's voyage is not an *overseas voyage*  
6 if:
- 7 (a) the voyage commences from a port in Queensland and ends  
8 at the same port or another port in Queensland; and
- 9 (b) as an incidental part of its voyage, the vessel is present in  
10 waters that are outside the outer limits of the exclusive  
11 economic zone of Australia but within the Protected Zone;  
12 and
- 13 (c) the vessel is not otherwise present in waters that are outside  
14 the outer limits of the exclusive economic zone of Australia.
- 15 (3) Despite subsection (1), a vessel's voyage is not an *overseas voyage*  
16 if the presence of the vessel in waters outside the outer limits of the  
17 exclusive economic zone of Australia is because of stress of  
18 weather, saving life at sea or other unavoidable cause.

19 **17 Definition of *customs vessel***

- 20 (1) A vessel is a *customs vessel* if it is:  
21 (a) used or for use for the purposes of Customs; and  
22 (b) declared by AMSA by written instrument under  
23 subsection (2) to be a customs vessel.

24 Note: Because of section 4AA of the *Customs Administration Act 1985*,  
25 *Customs* means the Australian Customs and Border Protection  
26 Service.

- 27 (2) AMSA may make a declaration that a vessel, or vessel included in  
28 a class of vessels, is a customs vessel.
- 29 (3) A declaration made under subsection (2) is not a legislative  
30 instrument.

31 **18 Definition of *special purpose vessel***

32 A vessel is a *special purpose vessel* if it is:

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- 1 (a) a vessel that is used or for use for a purpose specified in the  
2 regulations; and  
3 (b) specified by the regulations to be a special purpose vessel for  
4 the purposes of this section.

5 **19 AMSA may declare that a vessel is not a regulated Australian**  
6 **vessel**

- 7 (1) AMSA may, by written instrument, make a declaration that a  
8 vessel, or vessel included in a class of vessels, is not a regulated  
9 Australian vessel.
- 10 (2) AMSA may make the declaration if AMSA is satisfied of such  
11 matters as are prescribed by the regulations.
- 12 (3) A declaration made under subsection (1) is not a legislative  
13 instrument.

14 **20 Definition of vessel's *length overall***

- 15 (1) Subject to subsection (2), the *length overall* of a vessel is 110% of  
16 the length as shown on the vessel's load line certification.
- 17 (2) If the length overall of a vessel cannot be worked out under  
18 subsection (1), the *length overall* is taken to be the distance  
19 between:
- 20 (a) a vertical line passing through a point that is the foremost  
21 part of the bow; and  
22 (b) a vertical line passing through a point that is the aftermost  
23 part of the stern.

24 **21 Definition of *navigates without a licensed pilot***

- 25 (1) Subject to subsection (2), a vessel *navigates without a licensed*  
26 *pilot* if the vessel does not have a licensed pilot on board to assist  
27 the master in navigating it.
- 28 (2) If:
- 29 (a) apart from this subsection, a vessel navigates without a  
30 licensed pilot; and

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- 1 (b) the vessel is being towed by another vessel that is navigating  
2 with a licensed pilot;  
3 the vessel under tow is to be treated as if it had a licensed pilot on  
4 board to assist the master in navigating it.

5 **22 Definition of *taken to sea***

- 6 (1) A vessel is *taken to sea* if the vessel:  
7 (a) goes to sea, plies, runs or proceeds on a voyage; or  
8 (b) has been got underway for the purpose of going to sea,  
9 plying, running or proceeding on a voyage.  
10 (2) Despite subsection (1), a vessel is not taken to sea merely because  
11 the vessel has been got underway for the purpose of moving it from  
12 one berth or place in a port to another berth or place in the port.

13 **23 Definition of *seaworthy***

- 14 A vessel is *seaworthy* if, and only if:  
15 (a) it is in a fit state as to the condition of hull and equipment,  
16 boilers (if any) and machinery, the stowage of ballast or  
17 cargo, the number and qualifications of seafarers, and in  
18 every other respect, to:  
19 (i) encounter the ordinary perils of the voyage undertaken;  
20 and  
21 (ii) not pose a threat to the environment; and  
22 (b) it is not overloaded; and  
23 (c) the living and working conditions on board the vessel do not  
24 pose a threat to the health, safety or welfare of the vessel's  
25 seafarers.

26 Note: An unseaworthy vessel can be detained under section 248.

27 **24 Definition of *substandard***

28 A vessel to which the Safety Convention, the Load Lines  
29 Convention or the Prevention of Pollution Convention applies is  
30 *substandard*, in relation to the condition of the vessel or its  
31 equipment in respect of a particular voyage or operation of the  
32 vessel, if:

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- 1 (a) a certificate required by the Convention concerned for the  
2 proposed voyage or operation is not in force; or  
3 (b) both:  
4 (i) one or more certificates required by the Convention  
5 concerned for the proposed voyage or operation are in  
6 force; and  
7 (ii) the condition of the vessel or its equipment does not  
8 correspond substantially with the particulars of the  
9 certificate or certificates.

10 Note: A substandard vessel can be detained under section 248.  
11

Section 25

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1 **Part 5—Opting in to coverage**  
2

3 **25 Opting in to coverage—vessel declared to be a regulated**  
4 **Australian vessel**

- 5 (1) The owner, or any of the owners, of a vessel may apply to AMSA  
6 for a declaration (an *opt-in declaration*) that the vessel is a  
7 regulated Australian vessel.
- 8 (2) AMSA must, by written instrument, make an opt-in declaration for  
9 a vessel if AMSA is satisfied:  
10 (a) that the vessel is registered under the *Shipping Registration*  
11 *Act 1981*; and  
12 (b) that the vessel is seaworthy; and  
13 (c) that the vessel is not substandard (if applicable); and  
14 (d) of such other matters (if any) as are prescribed by the  
15 regulations.
- 16 (3) AMSA must make a decision on an application under  
17 subsection (1) within 30 days of the making of the application.
- 18 (4) An opt-in declaration is not a legislative instrument.
- 19 (5) AMSA must not make an opt-in declaration other than as  
20 mentioned in subsection (2).

21 **26 Revocation and variation of opt-in declarations**

- 22 (1) An opt-in declaration for a vessel ceases to be in force, unless  
23 sooner revoked:  
24 (a) at the end of the period, if any, specified in the declaration; or  
25 (b) when the vessel ceases to have Australian nationality.
- 26 (2) AMSA must revoke an opt-in declaration for a vessel if AMSA is  
27 requested to do so by the owner, or any of the owners, of the vessel  
28 and is satisfied of the matters prescribed by the regulations.
- 29 (3) AMSA may vary an opt-in declaration for a vessel if:

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- 1 (a) AMSA is satisfied that the name or any other details of the  
2 vessel have been changed since the making of the  
3 declaration; and  
4 (b) AMSA is satisfied that it is appropriate to vary, rather than  
5 revoke, the declaration.
- 6 (4) AMSA may revoke an opt-in declaration for a vessel if:  
7 (a) AMSA is satisfied that the vessel no longer exists or has been  
8 lost; or  
9 (b) AMSA is satisfied that the name or any other details of the  
10 vessel have been changed since the making of the declaration  
11 and that it is appropriate to revoke, rather than vary, the  
12 declaration; or  
13 (c) AMSA is no longer satisfied as mentioned in subsection  
14 25(2) in relation to the vessel.  
15

1 **Chapter 2—Seafarers**

2 **Part 1—Preliminary**  
3

4 **27 Simplified outline of this Chapter**

- 5 (1) This Chapter deals with matters relating to seafarers.
- 6 (2) Part 2 deals with seafarer certificates.
- 7 (3) Part 3 provides for the issue of maritime labour certificates for  
8 regulated Australian vessels.
- 9 (4) Part 4 deals with the manning of regulated Australian vessels and  
10 the engagement of seafarers.
- 11 (5) Part 5 deals with the health, accommodation and welfare of  
12 seafarers of regulated Australian vessels and foreign vessels.
- 13 (6) Part 6 provides for alcohol and drug testing of seafarers of  
14 regulated Australian vessels and foreign vessels.
- 15 (7) Part 7 contains miscellaneous provisions that relate to seafarers of  
16 regulated Australian vessels and foreign vessels.  
17

1 **Part 2—Seafarer certificates**

2 **Division 1—Regulations relating to seafarer certificates**

3 **28 Regulations relating to seafarer certificates**

- 4 (1) The regulations may make provision in relation to seafarer  
5 certificates.

6 Note: Part 4 of Chapter 9 contains general provisions that apply to  
7 regulations about certificates.

- 8 (2) Without limiting subsection (1), the regulations may give effect to  
9 the STCW Convention.

10 **29 Particular matters that may be prescribed by regulations**

- 11 (1) The regulations may prescribe different classes of seafarer  
12 certificates and may require that an individual hold a seafarer  
13 certificate of a particular kind in order to undertake particular  
14 duties, or perform particular functions, as a seafarer.

- 15 (2) The regulations may prescribe criteria relating to the following in  
16 relation to seafarer certificates:

- 17 (a) proficiencies, competencies and standards;  
18 (b) qualifications;  
19 (c) experience;  
20 (d) minimum age;  
21 (e) character;  
22 (f) health;  
23 (g) nationality, citizenship or residence.

- 24 (3) The regulations may make provision in relation to the following:

- 25 (a) the manner in which the attainment of proficiencies,  
26 competencies and standards is to be evidenced;  
27 (b) the instruction, training and examination of seafarers,  
28 including:  
29 (i) the gaining of sea service and other experience; and

**Chapter 2** Seafarers

**Part 2** Seafarer certificates

**Division 1** Regulations relating to seafarer certificates

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- 1 (ii) the conduct of examinations, the conditions for  
2 admission to examinations and the appointment and  
3 remuneration of examiners;
- 4 (c) the recognition of certificates and other documents granted or  
5 issued to or in respect of masters, officers and seafarers under  
6 the Marine Safety (Domestic Commercial Vessel) National  
7 Law of the Commonwealth or a law of a State, a Territory or  
8 a foreign country;
- 9 (d) conditions to which seafarer certificates are subject.
- 10 (4) This section does not limit section 28.  
11



1 **Division 2—Issue of seafarer certificates**

2 **30 Persons may apply for a seafarer certificate**

3 (1) An individual may apply to AMSA for a seafarer certificate of a  
4 kind specified in the regulations.

5 (2) The application must be in accordance with the regulations.

6 **31 Issue of seafarer certificate**

7 (1) AMSA may issue a seafarer certificate to a person if:

8 (a) the person has made an application for the certificate under  
9 section 30; and

10 (b) AMSA is satisfied that the criteria prescribed by the  
11 regulations are met in relation to the issue of the certificate.

12 (2) A seafarer certificate is subject to:

13 (a) the conditions (if any) prescribed by the regulations; and

14 (b) the conditions (if any) imposed by AMSA.

15 **32 AMSA may vary seafarer certificate**

16 (1) AMSA may vary a seafarer certificate if AMSA is satisfied that the  
17 criteria prescribed by the regulations are met in relation to the  
18 variation of the certificate.

19 (2) Without limiting subsection (1), AMSA may vary a seafarer  
20 certificate to impose, vary or remove a condition on the certificate.

21 **33 Revocation of seafarer certificate**

22 AMSA may revoke a seafarer certificate if AMSA is satisfied that  
23 the criteria prescribed by the regulations are met in relation to the  
24 revocation of the certificate.  
25

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1 **Division 3—Offences and civil penalties relating to seafarer**  
2 **certificates**

3 **34 False representations about seafarer certificates**

- 4 (1) A person must not represent that he or she holds a seafarer  
5 certificate of a particular kind if the representation is false.

6 *Fault-based offence*

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

9 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

10 *Civil penalty*

- 11 (3) A person is liable to a civil penalty if the person contravenes  
12 subsection (1).

13 Civil penalty: 3,000 penalty units.

14 **35 Person performing duties or functions without a seafarer**  
15 **certificate**

- 16 (1) A person must not perform duties or functions in relation to a  
17 regulated Australian vessel if:  
18 (a) the regulations require the person to hold a particular seafarer  
19 certificate in order to perform those duties or functions; and  
20 (b) the person does not hold such a seafarer certificate.

- 21 (2) Subsection (1) does not apply to the performance of duties or  
22 functions in exceptional circumstances.

23 *Fault-based offence*

- 24 (3) A person commits an offence if the person contravenes  
25 subsection (1).

26 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

1 Note: A defendant bears an evidential burden in relation to the matter in  
2 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

3 *Civil penalty*

4 (4) A person is liable to a civil penalty if the person contravenes  
5 subsection (1).

6 Civil penalty: 3,000 penalty units.

7 (5) A person who wishes to rely on subsection (2) in proceedings for a  
8 civil penalty order bears an evidential burden in relation to the  
9 matters in that subsection.

10 **36 Master causing etc. performance of duties or functions without a**  
11 **seafarer certificate**

12 (1) The master of a regulated Australian vessel must not cause or  
13 permit another person to perform duties or functions in relation to  
14 the vessel if:

15 (a) the regulations require the other person to hold a particular  
16 seafarer certificate in order to perform those duties or  
17 functions; and

18 (b) the other person does not hold such a seafarer certificate.

19 (2) Subsection (1) does not apply to the performance of duties or  
20 functions in exceptional circumstances.

21 *Fault-based offence*

22 (3) A person commits an offence if the person contravenes  
23 subsection (1).

24 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

25 Note: A defendant bears an evidential burden in relation to the matter in  
26 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

27 *Civil penalty*

28 (4) A person is liable to a civil penalty if the person contravenes  
29 subsection (1).

**Chapter 2** Seafarers

**Part 2** Seafarer certificates

**Division 3** Offences and civil penalties relating to seafarer certificates

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1                    Civil penalty:            3,000 penalty units.

2                    (5) A person who wishes to rely on subsection (2) in proceedings for a  
3                    civil penalty order bears an evidential burden in relation to the  
4                    matters in that subsection.

5                    **37 Breach of a condition of a seafarer certificate**

6                    (1) A person must not breach a condition of a seafarer certificate held  
7                    by the person.

8                    *Fault-based offence*

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

11                    Penalty: Imprisonment for 12 months or 60 penalty units, or both.

12                    *Civil penalty*

13                    (3) A person is liable to a civil penalty if the person contravenes  
14                    subsection (1).

15                    Civil penalty:            600 penalty units.

16                    **38 Master causing etc. breach of a condition of a seafarer certificate**

17                    (1) The master of a regulated Australian vessel must not cause or  
18                    permit another person to breach a condition of a seafarer certificate  
19                    held by the other person.

20                    *Fault-based offence*

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

23                    Penalty: Imprisonment for 12 months or 60 penalty units, or both.

24                    *Civil penalty*

25                    (3) A person is liable to a civil penalty if the person contravenes  
26                    subsection (1).

1                            Civil penalty:            600 penalty units.

2        **39 Failing to produce seafarer certificate**

3                            (1) The holder of a seafarer certificate must ensure that the certificate  
4                            is made available at all reasonable times for examination on  
5                            request by any of the following:

- 6                            (a) AMSA;  
7                            (b) an inspector;  
8                            (c) an officer of Customs.

9                            *Fault-based offence*

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

12                           Penalty: Imprisonment for 12 months or 60 penalty units, or both.

13                           *Civil penalty*

14                           (3) A person is liable to a civil penalty if the person contravenes  
15                           subsection (1).

16                           Civil penalty:            600 penalty units.

17        **40 AMSA may require delivery of revoked certificates**

18                           If a seafarer certificate is revoked, AMSA may require the  
19                           certificate to be delivered to AMSA in accordance with the  
20                           regulations.  
21

**Chapter 2** Seafarers

**Part 3** Maritime labour certificates

**Division 1** Vessels to which this Part applies

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1 **Part 3—Maritime labour certificates**

2 **Division 1—Vessels to which this Part applies**

3 **41 Vessels to which this Part applies**

4 This Part applies to regulated Australian vessels.

5

1     **Division 2—Regulations relating to maritime labour**  
2             **certificates**

3     **42 Regulations relating to maritime labour certificates**

4             (1) The regulations may make provision in relation to maritime labour  
5             certificates.

6             Note:       Part 4 of Chapter 9 contains general provisions that apply to  
7             regulations about certificates.

8             (2) The regulations may provide that vessels included in a particular  
9             class are required to have maritime labour certificates of specified  
10            kinds, either generally or in specified circumstances, including  
11            certificates relating to the working and living conditions of the  
12            vessel's seafarers.  
13

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1     **Division 3—Issue of maritime labour certificates**

2     **43 Persons may apply for a maritime labour certificate**

- 3             (1) A person may apply to an issuing body for a maritime labour  
4                 certificate of a kind specified in the regulations for a vessel.
- 5             (2) The application must be in accordance with the regulations.

6     **44 Issue of maritime labour certificate**

- 7             (1) An issuing body may issue a maritime labour certificate for a  
8                 vessel if:
- 9                 (a) an application for the certificate has been made under  
10                 section 43; and
- 11                 (b) the issuing body is satisfied that the criteria prescribed by the  
12                 regulations are met in relation to the issue of the certificate.
- 13             (2) A maritime labour certificate is subject to:
- 14                 (a) the conditions (if any) prescribed by the regulations; and  
15                 (b) the conditions (if any) imposed by the issuing body.

16     **45 Issuing body may vary maritime labour certificate**

- 17             (1) An issuing body may vary a maritime labour certificate if the  
18                 issuing body is satisfied that the criteria prescribed by the  
19                 regulations are met in relation to the variation of the certificate.
- 20             (2) Without limiting subsection (1), an issuing body may vary a  
21                 maritime labour certificate to impose, vary or remove a condition  
22                 on the certificate.

23     **46 Revocation of maritime labour certificate**

24             An issuing body may revoke a maritime labour certificate if the  
25                 issuing body is satisfied that the criteria prescribed by the  
26                 regulations are met in relation to the revocation of the certificate.  
27



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

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

(1) The owner of a regulated Australian vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:

- (a) the vessel is required by the regulations to have a maritime labour certificate of a specified kind; and
- (b) a maritime labour certificate of that kind is not in force for the vessel.

*Fault-based offence*

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

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

*Civil penalty*

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

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

(1) The master of a regulated Australian vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:

- (a) the vessel is required by the regulations to have a maritime labour certificate of a specified kind; and
- (b) a maritime labour certificate of that kind is not in force for the vessel.

**Chapter 2** Seafarers

**Part 3** Maritime labour certificates

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

**Section 49**

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1

*Fault-based offence*

2

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

3

4

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

5

*Civil penalty*

6

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

7

8

Civil penalty: 600 penalty units.

9

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

10

11

- (1) A person contravenes this subsection if:

12

(a) the person is the owner or master of a regulated Australian vessel; and

13

14

(b) the vessel is altered in such a way as to affect the maritime labour certificates that vessel is required to have; and

15

16

(c) AMSA, and each issuing body that has issued a maritime labour certificate for the vessel, are not informed of the

17

18

alterations within the period prescribed by the regulations.

19

*Fault-based offence*

20

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

21

22

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

23

*Civil penalty*

24

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

25

26

Civil penalty: 600 penalty units.

27

1 **Part 4—Manning and engagement of seafarers**

2 **Division 1—Vessels to which this Part applies**

3 **50 Vessels to which this Part applies**

4 This Part applies to regulated Australian vessels.

5

Section 51

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1 **Division 2—Manning of vessels**

2 **51 Minimum complement of seafarers on vessels**

- 3 (1) AMSA may determine in writing that a vessel, or a vessel included  
4 in a class of vessels, must carry:  
5 (a) a master who holds a specified seafarer certificate; and  
6 (b) not less than:  
7 (i) a specified number of officers who hold specified  
8 seafarer certificates; and  
9 (ii) a specified number of seafarers who hold specified  
10 seafarer certificates.
- 11 (2) AMSA must have regard to any matters prescribed by the  
12 regulations in making a determination under subsection (1).
- 13 (3) A determination under subsection (1) may require a vessel, or a  
14 vessel included in a class of vessels, to carry a master who holds a  
15 specified seafarer certificate and to carry a different complement of  
16 seafarers:  
17 (a) for different voyages; or  
18 (b) for the carriage of different cargoes; or  
19 (c) for the performance (whether in port or at sea) of different  
20 operations done by, or in relation to, the vessel; or  
21 (d) according to whether the vessel is in port or at sea.
- 22 (4) A determination under subsection (1) may specify conditions to  
23 which the determination is subject.
- 24 (5) More than one determination under subsection (1) may apply in  
25 relation to a vessel.
- 26 (6) A determination made under subsection (1) is not a legislative  
27 instrument.

28 **52 Operating a vessel other than in accordance with determination**

- 29 (1) The master of a vessel must not operate the vessel, or cause or  
30 permit another person to operate the vessel, if:

- 1 (a) a determination under section 51 is in force for the vessel;  
2 and  
3 (b) the operation of the vessel is not in accordance with the  
4 determination.

5 *Fault-based offence*

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

8 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

9 *Civil penalty*

- 10 (3) A person is liable to a civil penalty if the person contravenes  
11 subsection (1).

12 Civil penalty: 3,000 penalty units.

13 **53 Owner or master to give details of complement of vessel's**  
14 **seafarers**

- 15 (1) The owner or master of a vessel must, at such times as are required  
16 by AMSA, give to a person prescribed by the regulations such  
17 details of, and such details of changes in, the complement of the  
18 vessel's seafarers as the regulations require the owner or the master  
19 to give.

20 *Strict liability offence*

- 21 (2) A person commits an offence of strict liability if the person  
22 contravenes subsection (1).

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

24 Penalty: 10 penalty units.

25 *Civil penalty*

- 26 (3) A person is liable to a civil penalty if the person contravenes  
27 subsection (1).

28 Civil penalty: 100 penalty units.

Section 54

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1 **Division 3—Engagement of seafarers, etc.**

2 **54 Work agreements**

3 (1) The master of a vessel must not take the vessel to sea, or cause or  
4 permit another person to take the vessel to sea, if:

- 5 (a) a seafarer is on board the vessel; and  
6 (b) when the vessel is taken to sea, a work agreement that  
7 complies with the regulations made for the purposes of  
8 subsection (5) is not in force in relation to the seafarer.

9 (2) The owner of a vessel must not take the vessel to sea, or cause or  
10 permit another person to take the vessel to sea, if:

- 11 (a) a seafarer is on board the vessel; and  
12 (b) when the vessel is taken to sea, a work agreement that  
13 complies with the regulations made for the purposes of  
14 subsection (5) is not in force in relation to the seafarer.

15 *Fault-based offence*

16 (3) A person commits an offence if the person contravenes  
17 subsection (1) or (2).

18 Penalty: 30 penalty units.

19 *Civil penalty*

20 (4) A person is liable to a civil penalty if the person contravenes  
21 subsection (1) or (2).

22 Civil penalty: 300 penalty units.

23 *Regulations*

24 (5) The regulations may prescribe matters relating to work agreements  
25 including, but not limited to, the following:

- 26 (a) the content and form of work agreements;  
27 (b) the right of a seafarer to review, and seek advice on, a work  
28 agreement before signing it;  
29 (c) the process for signing work agreements;

- 1 (d) the information or documents that must be given to, or made  
2 available to, seafarers in relation to work agreements and the  
3 manner in which such information or documents must be  
4 given or made available;  
5 (e) the termination of work agreements;  
6 (f) keeping records of work agreements and retaining such  
7 records;  
8 (g) the home port of seafarers.

9 **55 Owner to make available information about conditions of**  
10 **employment**

- 11 (1) The regulations may prescribe:  
12 (a) information, in relation to the conditions of employment of  
13 seafarers, that the owner of a vessel is required to make  
14 available to the vessel's seafarers; and  
15 (b) the manner and form (including electronic form) in which the  
16 prescribed information is required to be made available.  
17 (2) The owner of a vessel must not contravene a requirement of the  
18 regulations made for the purposes of subsection (1).

19 *Fault-based offence*

- 20 (3) A person commits an offence if the person contravenes  
21 subsection (2).

22 Penalty: 10 penalty units.

23 *Civil penalty*

- 24 (4) A person is liable to a civil penalty if the person contravenes  
25 subsection (2).

26 Civil penalty: 100 penalty units.

27 **56 Offences and civil penalties relating to content of work**  
28 **agreements**

- 29 (1) A person must not:

**Chapter 2** Seafarers

**Part 4** Manning and engagement of seafarers

**Division 3** Engagement of seafarers, etc.

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---

- 1 (a) fraudulently alter a work agreement; or  
2 (b) make a false entry in a work agreement; or  
3 (c) give a false copy of a work agreement to another person.

4 *Fault-based offence*

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

7 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

8 *Civil penalty*

- 9 (3) A person is liable to a civil penalty if the person contravenes  
10 subsection (1).

11 Civil penalty: 600 penalty units.

12 **57 Regulations about records of service**

13 The regulations may make provision in relation to keeping,  
14 retaining and producing records of service of seafarers.

15 **58 Regulations about hours of work and rest**

16 The regulations may make provision in relation to the hours of  
17 work, and hours of rest, of seafarers.

18 **59 Regulations about payment of wages**

- 19 (1) The regulations may make provision in relation to the payment of  
20 wages to seafarers.

- 21 (2) Without limiting subsection (1), the regulations may make  
22 provision in relation to the following:

- 23 (a) the frequency of making payments to seafarers;  
24 (b) the method of making payments to seafarers;  
25 (c) permitted deductions from payments to seafarers;  
26 (d) pay slips, including the information relating to exchange rates  
27 that must be included in any pay slip given to a seafarer;



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- 1                   (e) the payment of part or all of the wages of a seafarer, with the  
2                   seafarer's consent, to a person other than the seafarer;  
3                   (f) the charges that may be imposed for making payments in  
4                   accordance with paragraph (e);  
5                   (g) the entitlement to wages of a seafarer left at a port because he  
6                   or she is ill or injured.
- 7                   (3) The regulations must not provide for the quantum or amount of  
8                   wages payable to seafarers.  
9

Section 60

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1 **Part 5—Health, accommodation and welfare**

2 **Division 1—Vessels to which this Part applies**

3 **60 Vessels to which this Part applies**

4 This Part applies to:

5 (a) regulated Australian vessels; and

6 (b) foreign vessels.

7

1 **Division 2—Provisions**

2 **61 Regulations about provision of food and water**

3 (1) The regulations may make provision in relation to the provision of  
4 food and drinking water on board vessels.

5 (2) Without limiting subsection (1), the regulations may make  
6 provision in relation to the following:

7 (a) the quantity and quality of food and drinking water to be  
8 carried and made available on board vessels;

9 (b) mechanisms for making and dealing with complaints about  
10 the quantity and quality of food and drinking water.

11 **62 Free provisions**

12 (1) The owner of a vessel must provide or ensure the provision of free  
13 provisions to the vessel's seafarers.

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

16 Penalty: 10 penalty units.

17 **63 Provisions adequate for voyage**

18 (1) The master of a vessel must not take the vessel to sea, or cause or  
19 permit the vessel to be taken to sea, unless the vessel is carrying:

20 (a) drinking water of suitable quality and quantity; and

21 (b) food of suitable quality, quantity, nutritive value and variety;  
22 having regard to the nature and duration of the voyage and the  
23 number, and cultural and religious backgrounds, of the vessel's  
24 seafarers.

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

27 Penalty: 10 penalty units.

Section 64

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1       **64 Adequate food catering facilities to be provided**

2               (1) The owner of a vessel must not take the vessel to sea, or cause or  
3               permit the vessel to be taken to sea, unless the vessel has catering  
4               facilities that are arranged and equipped so as to enable proper  
5               meals to be served to the vessel's seafarers.

6               *Fault-based offence*

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

9               Penalty: 10 penalty units.

10              *Civil penalty*

11              (3) A person is liable to a civil penalty if the person contravenes  
12              subsection (1).

13              Civil penalty:        100 penalty units.  
14

1 **Division 3—Health**

2 **65 Regulations about health**

- 3 (1) The regulations may make provision in relation to the health of  
4 seafarers.
- 5 (2) Without limiting subsection (1), the regulations may make  
6 provision in relation to the following:
- 7 (a) the appointment of a person as a medical inspector;
  - 8 (b) fees payable for services performed by medical inspectors;
  - 9 (c) the medical examination of seafarers and people proposing to  
10 become seafarers, including requirements for:
    - 11 (i) periodic medical examinations; and
    - 12 (ii) medical examinations on the request of AMSA;
  - 13 (d) reporting requirements relating to medical examinations;
  - 14 (e) issuing of certificates of fitness to seafarers and people  
15 proposing to become seafarers;
  - 16 (f) requiring seafarers to hold specified certificates of fitness;
  - 17 (g) prohibiting the employment or engagement of a person as a  
18 seafarer unless the person holds specified certificates of  
19 fitness;
  - 20 (h) medicines, medical and surgical stores and appliances and  
21 antiscorbutics;
  - 22 (i) instructions for dispensing and using medicines, medical and  
23 surgical stores and appliances and antiscorbutics;
  - 24 (j) the inspection of medicines, medical and surgical stores and  
25 appliances, antiscorbutics and other things required to be  
26 carried on board vessels.

27 **66 Medicines etc. must be carried on vessels—owner**

- 28 (1) The owner of a vessel must not take the vessel to sea, or cause or  
29 permit the vessel to be taken to sea, unless the vessel is provided,  
30 in accordance with the regulations, with:
- 31 (a) medicines, medical and surgical stores and appliances and  
32 antiscorbutics; and

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- 1 (b) instructions for dispensing and using medicines, medical and  
2 surgical stores and appliances and antiscorbutics.

3 *Fault-based offence*

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

6 Penalty: 100 penalty units.

7 *Civil penalty*

- 8 (3) A person is liable to a civil penalty if the person contravenes  
9 subsection (1).

10 Civil penalty: 1,000 penalty units.

11 **67 Medicines etc. must be carried on vessels—master**

- 12 (1) The master of a vessel must not take the vessel to sea, or cause or  
13 permit the vessel to be taken to sea, unless the vessel is provided,  
14 in accordance with the regulations, with:

15 (a) medicines, medical and surgical stores and appliances and  
16 antiscorbutics; and

17 (b) instructions for dispensing and using medicines, medical and  
18 surgical stores and appliances and antiscorbutics.

19 *Fault-based offence*

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

22 Penalty: 100 penalty units.

23 *Civil penalty*

- 24 (3) A person is liable to a civil penalty if the person contravenes  
25 subsection (1).

26 Civil penalty: 1000 penalty units.

1 **68 Owner liable for medical attendance etc.**

- 2 (1) This section applies if a seafarer who is not at his or her home port:  
3 (a) is hurt or injured or contracts a disease; or  
4 (b) suffers from any illness that is not due to an intentional act or  
5 default, or to misbehaviour, on the part of the seafarer; or  
6 (c) requires essential dental care.
- 7 (2) Expenses for the following are to be paid by the owner of the  
8 seafarer's vessel:  
9 (a) providing the necessary surgical and medical advice and  
10 attendance, and medicine, until the seafarer is cured, dies or  
11 arrives at that port;  
12 (b) the maintenance of the seafarer until he or she is cured, dies  
13 or arrives at that port;  
14 (c) the conveyance of the seafarer to that port;  
15 (d) if the seafarer dies before arriving at that port—his or her  
16 burial or, if the seafarer's body is conveyed to that port at the  
17 request of a member of his or her family, the conveyance of  
18 the seafarer's body to that port.

19 **69 Owner liable where certain seafarers removed from vessel etc.**

- 20 (1) This section applies if:  
21 (a) a seafarer is suffering from a disease or illness or requires  
22 essential dental care; and  
23 (b) the seafarer is temporarily removed from the seafarer's vessel  
24 for the purpose of preventing infection or otherwise for the  
25 convenience of the vessel.
- 26 (2) Expenses for the following are to be paid by the owner of the  
27 vessel:  
28 (a) the removal of the seafarer from, and the seafarer's return to,  
29 the vessel;  
30 (b) providing the necessary surgical and medical advice and  
31 attendance, essential dental care and medicine, while the  
32 seafarer is away from the vessel;  
33 (c) the maintenance of the seafarer while he or she is away from  
34 the vessel.

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1       **70 Owner liable for medical attendance etc. on board vessel**

2                   Expenses for all medicine, surgical and medical advice and  
3                   attendance, and essential dental care, given to a seafarer while the  
4                   seafarer is on board a vessel must be paid by the owner of the  
5                   vessel.

6       **71 Other expenses to be paid by seafarer**

7                   Any reasonable expenses incurred by the owner of a vessel in  
8                   respect of the illness or burial of a seafarer that are not expenses  
9                   required to be paid by the owner of the seafarer's vessel under  
10                  section 68, 69 or 70 may be recovered from the seafarer.

11       **72 Medical practitioners and first-aid attendants—owner**

12                  (1) The owner of a vessel that has 100 or more persons on board must  
13                  ensure that a qualified medical practitioner is carried, as part of the  
14                  vessel's complement, if the vessel is:

- 15                   (a) proceeding on an overseas voyage; or  
16                   (b) on a passage between 2 consecutive ports which exceeds the  
17                   distance prescribed by the regulations.

18                  (2) The owner of a vessel that has more than 10 but fewer than 100  
19                  persons on board must cause to be carried as part of its  
20                  complement a person qualified, in accordance with the regulations,  
21                  to render first aid, if the vessel is:

- 22                   (a) proceeding on an overseas voyage; or  
23                   (b) on a passage between 2 consecutive ports which exceeds the  
24                   distance prescribed by the regulations;  
25                  unless the vessel is carrying a qualified medical practitioner as part  
26                  of its complement.

27                  *Fault-based offence*

28                  (3) A person commits an offence if the person contravenes  
29                  subsection (1) or (2).

30                  Penalty: Imprisonment for 12 months or 60 penalty units, or both.



1                                    *Civil penalty*

- 2                    (4) A person is liable to a civil penalty if the person contravenes  
3                    subsection (1) or (2).

4                    Civil penalty:            600 penalty units.

5                    **73 Medical practitioners and first-aid attendants—master**

- 6                    (1) The master of a vessel that has 100 or more persons on board must  
7                    ensure that a qualified medical practitioner is carried, as part of the  
8                    vessel's complement, if the vessel is:

9                                    (a) proceeding on an overseas voyage; or

10                                   (b) on a passage between 2 consecutive ports which exceeds the  
11                                   distance prescribed by the regulations.

- 12                    (2) The master of a vessel that has more than 10 but fewer than 100  
13                    persons on board must cause to be carried as part of its  
14                    complement a person prescribed by the regulations as qualified to  
15                    render first aid if the vessel is:

16                                   (a) proceeding on an overseas voyage; or

17                                   (b) on a passage between 2 consecutive ports which exceeds the  
18                                   distance prescribed by the regulations;

19                    unless the vessel is carrying a qualified medical practitioner as part  
20                    of its complement.

21                                    *Fault-based offence*

- 22                    (3) A person commits an offence if the person contravenes  
23                    subsection (1) or (2).

24                    Penalty: Imprisonment for 12 months or 60 penalty units, or both.

25                                    *Civil penalty*

- 26                    (4) A person is liable to a civil penalty if the person contravenes  
27                    subsection (1) or (2).

28                    Civil penalty:            600 penalty units.

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1 **Division 4—Accommodation, etc.**

2 **74 Regulations relating to accommodation, etc.**

- 3 (1) The regulations may make provision in relation to accommodation  
4 to be provided for seafarers on vessels.
- 5 (2) Without limiting subsection (1), the regulations may make  
6 provision in relation to the following:
- 7 (a) the minimum amount of space to be provided for each  
8 seafarer;
  - 9 (b) the maximum number of seafarers to be accommodated in a  
10 specified part of a vessel;
  - 11 (c) the part of a vessel in which the whole or a part of the  
12 accommodation is to be provided;
  - 13 (d) the requirements for the construction, furnishing and  
14 equipment of the accommodation, including heating, lighting  
15 and ventilation;
  - 16 (e) the maximum levels of noise, vibration and other ambient  
17 factors;
  - 18 (f) the maintenance and repair of the accommodation;
  - 19 (g) the prohibition or restriction of the use of accommodation for  
20 a purpose other than that specified;
  - 21 (h) the provision of hot and cold fresh water;
  - 22 (i) the provision of bedding, mess utensils, towels and toiletries;
  - 23 (j) the submission of plans and specifications relating to the  
24 provision or alteration of accommodation.
- 25 (3) Regulations may make provision in relation to the following:
- 26 (a) the provision of ventilation of machinery and boiler spaces;
  - 27 (b) the provision of wheelhouses.

28 **75 Vessels not to go to sea without required accommodation**

- 29 (1) The owner of a vessel must not take the vessel to sea, or cause or  
30 permit the vessel to be taken to sea, if the vessel does not comply  
31 with the accommodation prescribed by the regulations made for the  
32 purposes of subsection 74(1).

1

*Fault-based offence*

2

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

3

4

Penalty: 100 penalty units.

5

*Civil penalty*

6

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

7

8

Civil penalty: 1,000 penalty units.

9

Section 76

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1       **Division 5—Repatriation and protection**

2       **76 Regulations relating to repatriation**

- 3               (1) The regulations may make provision in relation to the repatriation  
4               of seafarers at no cost to the seafarer.
- 5               (2) Without limiting subsection (1), the regulations may make  
6               provision for or in relation to the following:
- 7                     (a) the circumstances in which a seafarer is entitled to be  
8                     repatriated, including in the following circumstances:
- 9                         (i) expiry or termination of the seafarer’s work agreement;  
10                        (ii) inability to carry out the seafarer’s duties;  
11                        (iii) injury or illness of the seafarer;  
12                        (iv) transfer, sale or wreck of the seafarer’s vessel;
- 13                     (b) the liability for the costs of repatriation and recovery of costs;  
14                     (c) the mode of transport of repatriation;  
15                     (d) the destination to which the seafarer is repatriated.

16       **77 Regulations relating to complaints etc. about employment**

- 17               The regulations may make provision in relation to complaints and  
18               legal proceedings relating to a seafarer’s employment, including in  
19               relation to:
- 20                     (a) how such complaints are to be handled; and  
21                     (b) leave to go to shore in relation to such complaints or legal  
22                     proceedings.  
23

1 **Part 6—Alcohol and drugs**

2 **Division 1—Alcohol and drug testing of seafarers and**  
3 **pilots**

4 **78 Seafarer or licensed pilot may be required to undergo alcohol test**

5 AMSA may require a seafarer or a licensed pilot on board a  
6 regulated Australian vessel or a foreign vessel to undergo a test of  
7 a kind prescribed by the regulations for the purpose of determining  
8 the level of alcohol in the blood of the seafarer or pilot.

9 **79 Seafarer or licensed pilot may be required to undergo drug tests**  
10 **etc.**

11 AMSA may require a seafarer or a licensed pilot on board a  
12 regulated Australian vessel or a foreign vessel to undergo a test of  
13 a kind prescribed by the regulations for the purpose of determining  
14 the presence of a drug in the blood of the seafarer or pilot.

15 **80 Limitation on exercise of powers in relation to foreign vessels**

16 AMSA must not exercise a power under section 78 or 79 in  
17 relation to a seafarer of a foreign vessel, or a pilot on board a  
18 foreign vessel, unless the vessel is:

- 19 (a) in an Australian port; or  
20 (b) entering or leaving an Australian port; or  
21 (c) in the internal waters of Australia; or  
22 (d) in the territorial sea of Australia, other than in the course of  
23 innocent passage.

24 **81 Refusal to undergo alcohol or drug test**

- 25 (1) A person contravenes this subsection if:  
26 (a) the person has been required to undergo an alcohol test or a  
27 drug test; and  
28 (b) the person fails to undergo the test.

**Chapter 2** Seafarers

**Part 6** Alcohol and drugs

**Division 1** Alcohol and drug testing of seafarers and pilots

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---

1

*Fault-based offence*

2

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

3

4

Penalty: 60 penalty units.

5

*Civil penalty*

6

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

7

8

Civil penalty: 600 penalty units.

9

**82 Information to be provided after test**

10

As soon as practicable after a seafarer or a licensed pilot has undergone an alcohol test or a drug test, the person who conducted the test must give the seafarer or pilot a written statement specifying:

11

12

13

14

(a) the test result; and

15

(b) the date and time of the test.

16

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

3     **83 Impairment of person’s capacity to carry out duties as seafarer**  
4             **or pilot**

- 5             (1) A person contravenes this subsection if:
- 6                 (a) the person is a seafarer or a licensed pilot on board a  
7                     regulated Australian vessel or a foreign vessel; and
- 8                 (b) the person is under the influence of alcohol or any other drug  
9                     (whether medicinal or otherwise) to such an extent that his or  
10                     her capacity to carry out the duties of a seafarer or pilot is  
11                     impaired.

12                     *Fault-based offence*

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

15             Penalty: 60 penalty units.

16     **84 Unacceptable blood alcohol level—seafarers and pilots**

- 17             (1) A person contravenes this subsection if:
- 18                 (a) the person is a seafarer or a licensed pilot on board a  
19                     regulated Australian vessel or a foreign vessel; and
- 20                 (b) the blood alcohol level of the person equals or exceeds the  
21                     blood alcohol level prescribed by the regulations.

22                     *Strict liability offence*

- 23             (2) A person commits an offence of strict liability if the person  
24             contravenes subsection (1).

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

26             Penalty: 60 penalty units.

27     **85 Drugs prescribed by the regulations: seafarers and pilots**

- 28             (1) A person contravenes this subsection if:
-

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- 1 (a) the person is a seafarer or a licensed pilot on board a  
2 regulated Australian vessel or a foreign vessel; and  
3 (b) a drug prescribed by the regulations is present in the blood of  
4 the person.

5 *Strict liability offence*

- 6 (2) A person commits an offence of strict liability if the person  
7 contravenes subsection (1).

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

9 Penalty: 60 penalty units.

10 **86 Permitting or requiring performance of duties by impaired**  
11 **person**

- 12 (1) A person contravenes this subsection if:  
13 (a) the person is the owner or master of a regulated Australian  
14 vessel or a foreign vessel; and  
15 (b) the person permits or requires a seafarer or pilot to undertake  
16 or to continue duty on board the vessel; and  
17 (c) the person knows that the capacity of the seafarer or pilot to  
18 perform those duties is impaired by the influence of alcohol  
19 or any other drug (whether medicinal or otherwise).

20 *Strict liability offence*

- 21 (2) A person commits an offence of strict liability if the person  
22 contravenes subsection (1).

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

24 Penalty: 60 penalty units.  
25



1     **Division 3—Regulations and other matters**

2     **87 Regulations relating to alcohol and drug tests**

3             The regulations may make provision in relation to the following:

- 4             (a) the authorisation of persons:
- 5                 (i) to conduct alcohol tests and drug tests; and
- 6                 (ii) to operate devices equipment for that purpose;
- 7             (b) the conduct of alcohol tests and drug tests, including random
- 8                 tests and tests with notice;
- 9             (c) the devices used in conducting alcohol tests and drug tests,
- 10                 including the calibration, inspection and testing of those
- 11                 devices;
- 12             (d) the approval of persons to conduct analyses in connection
- 13                 with such tests;
- 14             (e) the procedure for the handling and analysis of samples;
- 15             (f) the confidentiality of test results;
- 16             (g) the storage and destruction of samples.

17     **88 Evidentiary certificates**

- 18             (1) A person who conducts an alcohol test or a drug test may issue a
- 19                 certificate stating:
- 20                 (a) that he or she conducted an alcohol test or a drug test of a
- 21                     person named in the certificate; and
- 22                 (b) the steps taken in conducting the test; and
- 23                 (c) that the person was given a statement in writing under
- 24                     section 82.
- 25             (2) In any proceedings relating to this Part, a certificate under this
- 26                 section is prima-facie evidence of the matters in the certificate.
- 27             (3) A document purporting to be a certificate under this section must,
- 28                 unless the contrary is proved, be taken to be such a certificate and
- 29                 to have been properly issued.
- 30             (4) A certificate must not be admitted in evidence in proceedings in
- 31                 relation to an offence or a civil penalty unless the person against

**Chapter 2** Seafarers

**Part 6** Alcohol and drugs

**Division 3** Regulations and other matters

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whom the proceedings were instituted has, at least 14 days before the certificate is sought to be admitted, been given:

(a) a copy of the certificate; and

(b) reasonable notice of the intention to produce the certificate as evidence in the proceedings.

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1 **Part 7—General matters relating to seafarers of**  
2 **regulated Australian vessels and foreign**  
3 **vessels**  
4

5 **89 Exemption from serving on jury**

6 A seafarer of a regulated Australian vessel or a foreign vessel is  
7 exempt from serving as a juror under the law of the  
8 Commonwealth or of a State or Territory.

9 **90 Seafarer not to be wrongfully left behind**

10 (1) A person must not:

- 11 (a) force onshore and leave behind at a place (whether within  
12 Australia or outside Australia) a seafarer of a regulated  
13 Australian vessel or a foreign vessel; or  
14 (b) otherwise cause such a seafarer to be left behind at such a  
15 place, either onshore or at sea.

16 *Fault-based offence*

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

19 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

20 *Civil penalty*

21 (3) A person is liable to a civil penalty if the person contravenes  
22 subsection (1).

23 Civil penalty: 600 penalty units.

24 **91 Regulations may make provision in relation to property of**  
25 **deceased seafarers**

26 The regulations may make provision in relation to dealing with the  
27 property of deceased seafarers of regulated Australian vessels and  
28 foreign vessels.

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1 **92 Expenses of returning foreign seafarers left behind**

2 If:

- 3 (a) a seafarer of a foreign vessel is left behind at an Australian  
4 port or dies in Australia; and  
5 (b) the Commonwealth incurs expense in sending the seafarer,  
6 the seafarer's body or any property of the seafarer outside  
7 Australia;

8 the Commonwealth may recover the amount of those expenses  
9 from the owner, agent or master of the vessel in an eligible court as  
10 a debt due and payable by the owner, agent or master to the  
11 Commonwealth.

12 **93 Owner of vessel not entitled to limit liability in respect of certain**  
13 **claims**

14 The owner of a regulated Australian vessel or a foreign vessel is  
15 not entitled to limit his, her or its liability in respect of any claim  
16 described in paragraph 1(a) of Article 2 of the Limitation of  
17 Liability for Maritime Claims Convention made by:

- 18 (a) a servant (within the meaning of the Convention) of the  
19 owner whose duties are connected with the vessel; or  
20 (b) any heir or dependant of the servant or any other person who  
21 is, within the meaning of paragraph (e) of Article 3 of the  
22 Convention, a person entitled to make such a claim.

23 **94 Employment of seafarers in loading and unloading**

- 24 (1) A person must not employ a seafarer at an Australian port in  
25 handling cargo in connection with the loading or unloading of a  
26 regulated Australian vessel or a foreign vessel:  
27 (a) if sufficient shore labour is available; or  
28 (b) if sufficient shore labour is not available—other than in  
29 accordance with any requirements prescribed by the  
30 regulations.

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1                    *Fault-based offence*

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

4                    Penalty: 100 penalty units.

5                    *Civil penalty*

- 6                    (3) A person is liable to a civil penalty if the person contravenes  
7                    subsection (1).

8                    Civil penalty:            1,000 penalty units.

9                    **95 Copy of this Act to be kept on regulated Australian vessels**

- 10                   (1) The master of a regulated Australian vessel must provide the  
11                   vessel's seafarers with access (whether electronic or otherwise), at  
12                   all reasonable times, to a copy of this Act.

13                    *Fault-based offence*

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

16                    Penalty: 5 penalty units.

17                    *Reference to Act does not include regulations, etc.*

- 18                    (3) In subsection (1), a reference to this Act does not include  
19                    regulations or other legislative instruments under this Act.

20                    *Regulations may require instruments to be accessible*

- 21                    (4) The regulations may require the master of a regulated Australian  
22                    vessel to provide the vessel's seafarers with access (whether  
23                    electronic or otherwise), at all reasonable times, to a copy of  
24                    specified regulations or other legislative instruments made under  
25                    this Act.  
26

1 **Chapter 3—Vessel safety**

2 **Part 1—Preliminary**  
3

4 **96 Simplified outline of this Chapter**

- 5 (1) This Chapter deals with the safety of regulated Australian vessels  
6 and foreign vessels.
- 7 (2) Part 2 deals with safety certificates for regulated Australian vessels  
8 and documentation for foreign vessels. It provides for offences and  
9 civil penalties that apply in relation to:
- 10 (a) taking regulated Australian vessels to sea without safety  
11 certificates; and  
12 (b) taking foreign vessels to sea without appropriate documents.
- 13 (3) Part 3 deals with offences and civil penalties for taking to sea an  
14 unseaworthy regulated Australian vessel or foreign vessel.
- 15 (4) Part 4 deals with passenger and cargo operations of regulated  
16 Australian vessels and foreign vessels, including in relation to:
- 17 (a) loading and overloading (Subdivision A of Division 3); and  
18 (b) dangerous goods (Subdivision B of Division 3).
- 19 (5) Part 5 deals with the carrying out of musters and drills on regulated  
20 Australian vessels, foreign vessels, domestic commercial vessels  
21 and recreational vessels.  
22

1 **Part 2—Certification**

2 **Division 1—Vessels to which this Part applies**

3 **97 Vessels to which this Part applies**

4 This Part applies to:

- 5 (a) regulated Australian vessels; and  
6 (b) foreign vessels.  
7

Section 98

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1 **Division 2—Regulations relating to safety certificates**

2 **98 Regulations relating to safety certificates**

3 (1) The regulations may make provision in relation to safety  
4 certificates.

5 Note: Part 4 of Chapter 9 contains general provisions that apply to  
6 regulations about certificates.

7 (2) Without limiting subsection (1), the regulations may make  
8 provision in relation to giving effect to the following:

- 9 (a) the Safety Convention;  
10 (b) the Load Lines Convention.

11 (3) The regulations may provide that vessels included in a particular  
12 class are required to have safety certificates of specified kinds,  
13 either generally or in specified circumstances, including certificates  
14 relating to the following matters:

- 15 (a) survey;  
16 (b) construction;  
17 (c) machinery and equipment;  
18 (d) other matters relating to the safety of vessels.  
19



1 **Division 3—Issue of safety certificates**

2 **99 Persons may apply for a safety certificate**

3 (1) A person may apply to an issuing body for a safety certificate of a  
4 kind specified in the regulations for a regulated Australian vessel.

5 (2) The application must be in accordance with the regulations.

6 **100 Issue of safety certificate**

7 (1) An issuing body may issue a safety certificate for a regulated  
8 Australian vessel if:

9 (a) an application for the certificate has been made under  
10 section 99; and

11 (b) the issuing body is satisfied that the criteria prescribed by the  
12 regulations in relation to the issue of the certificate are met.

13 (2) A safety certificate is subject to:

14 (a) the conditions (if any) prescribed by the regulations; and

15 (b) the conditions (if any) imposed by the issuing body.

16 **101 Issuing body may vary safety certificate**

17 (1) An issuing body may vary a safety certificate if the issuing body is  
18 satisfied that the criteria prescribed by the regulations in relation to  
19 the variation of the certificate are met.

20 (2) Without limiting subsection (1), an issuing body may vary a safety  
21 certificate to impose, vary or remove a condition on the certificate.

22 **102 Revocation of safety certificate**

23 An issuing body may revoke a safety certificate if the issuing body  
24 is satisfied that the criteria prescribed by the regulations in relation  
25 to the revocation of the certificate are met.  
26

Section 103

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

4 **103 Taking a regulated Australian vessel to sea without safety**  
5 **certificate—owner**

- 6 (1) The owner of a regulated Australian vessel must not take the vessel  
7 to sea, or cause or permit another person to take the vessel to sea,  
8 if:  
9 (a) the vessel is required by the regulations to have a safety  
10 certificate of a specified kind; and  
11 (b) such a safety certificate is not in force for the vessel.

12 *Fault-based offence*

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

15 Penalty: Imprisonment for 10 years or 600 penalty units, or both.

16 *Civil penalty*

- 17 (3) A person is liable to a civil penalty if the person contravenes  
18 subsection (1).

19 Civil penalty: 6,000 penalty units.

20 **104 Taking a regulated Australian vessel to sea without safety**  
21 **certificate—master**

- 22 (1) The master of a regulated Australian vessel must not take the  
23 vessel to sea, or cause or permit another person to take the vessel to  
24 sea, if:  
25 (a) the vessel is required by the regulations to have a safety  
26 certificate of a specified kind; and  
27 (b) such a safety certificate is not in force for the vessel.

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1 *Fault-based offence*

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

4 Penalty: Imprisonment for 10 years or 600 penalty units, or both.

5 *Civil penalty*

6 (3) A person is liable to a civil penalty if the person contravenes  
7 subsection (1).

8 Civil penalty: 6,000 penalty units.

9 **105 Obligation to notify alterations of regulated Australian vessels**  
10 **that relate to safety certificates**

11 (1) A person contravenes this subsection if:

- 12 (a) the person is the owner or master of a regulated Australian  
13 vessel; and  
14 (b) the vessel is altered so as to affect the safety certificates that  
15 vessel is required to have; and  
16 (c) AMSA, and each issuing body that has issued a safety  
17 certificate that is in force for the vessel, are not informed of  
18 the alterations within the period prescribed by the  
19 regulations.

20 *Fault-based offence*

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

23 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

24 *Civil penalty*

25 (3) A person is liable to a civil penalty if the person contravenes  
26 subsection (1).

27 Civil penalty: 600 penalty units.  
28

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

4 **106 Taking a foreign vessel to sea without appropriate documents—**  
5 **owner**

- 6 (1) The owner of a foreign vessel must not take the vessel to sea, or  
7 cause or permit another person to take the vessel to sea, if:  
8 (a) the vessel is required by the regulations to have a certificate  
9 of a specified kind and such a certificate is not in force for  
10 the vessel; or  
11 (b) if the vessel is not required by the regulations to have a  
12 certificate of a specified kind—other documentary evidence  
13 attesting that the vessel is seaworthy, issued by or on behalf  
14 of the country in which the vessel is or may be registered, is  
15 not in force.

16 *Fault-based offence*

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

19 Penalty: Imprisonment for 10 years or 600 penalty units, or both.

20 *Civil penalty*

- 21 (3) A person is liable to a civil penalty if the person contravenes  
22 subsection (1).

23 Civil penalty: 6,000 penalty units.

24 **107 Taking a foreign vessel to sea without appropriate documents—**  
25 **master**

- 26 (1) The master of a foreign vessel must not take the vessel to sea, or  
27 cause or permit another person to take the vessel to sea, if:  
28 (a) the vessel is required by the regulations to have a certificate  
29 of a specified kind and such a certificate is not in force for  
30 the vessel; or
-

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1 (b) if the vessel is not required by the regulations to have a  
2 certificate of a specified kind—other documentary evidence  
3 attesting that the vessel is seaworthy, issued by or on behalf  
4 of the country in which the vessel is registered, is not in  
5 force.

6 *Fault-based offence*

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

9 Penalty: Imprisonment for 10 years or 600 penalty units, or both.

10 *Civil penalty*

11 (3) A person is liable to a civil penalty if the person contravenes  
12 subsection (1).

13 Civil penalty: 6,000 penalty units.  
14

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1 **Part 3—Seaworthiness of vessels**  
2

3 **108 Vessels to which this Part applies**

- 4 This Part applies to:  
5 (a) regulated Australian vessels; and  
6 (b) foreign vessels.

7 **109 Taking unseaworthy vessel to sea—owner**

- 8 (1) The owner of a vessel must not take the vessel to sea, or cause or  
9 permit another person to take the vessel to sea, if the vessel is  
10 unseaworthy.

11 *Fault-based offence*

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

14 Penalty: Imprisonment for 10 years or 600 penalty units, or both.

15 *Civil penalty*

- 16 (3) A person is liable to a civil penalty if the person contravenes  
17 subsection (1).

18 Civil penalty: 6,000 penalty units.

19 **110 Taking unseaworthy vessel to sea—master**

- 20 (1) The master of a vessel must not take the vessel to sea, or cause or  
21 permit another person to take the vessel to sea, if the vessel is  
22 unseaworthy.

23 *Fault-based offence*

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

26 Penalty: Imprisonment for 10 years or 600 penalty units, or both.

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1

*Civil penalty*

2

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

3

4

Civil penalty: 6,000 penalty units.

5

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**Part 4** Passenger and cargo operations, and overloading

**Division 1** Vessels to which this Part applies

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1 **Part 4—Passenger and cargo operations, and**  
2 **overloading**

3 **Division 1—Vessels to which this Part applies**

4 **111 Vessels to which this Part applies**

5 This Part applies to:

- 6 (a) regulated Australian vessels; and  
7 (b) foreign vessels.  
8



1 **Division 2—Regulations relating to passenger and cargo**  
2 **operations**

3 **112 Regulations relating to passenger and cargo operations**

4 *Passengers*

- 5 (1) The regulations may make provision in relation to the carriage of  
6 passengers.
- 7 (2) Without limiting subsection (1), the regulations may make  
8 provision in relation to the following:
- 9 (a) equipment;
  - 10 (b) the number of passengers to be carried;
  - 11 (c) accommodation;
  - 12 (d) provisions and water;
  - 13 (e) medical and surgical stores;
  - 14 (f) medical inspection;
  - 15 (g) medical staff and attendants;
  - 16 (h) hospital accommodation;
  - 17 (i) sanitary matters;
  - 18 (j) discipline;
  - 19 (k) passenger lists.
- 20 (3) Without limiting subsection (1), the regulations may make  
21 provision in relation to:
- 22 (a) the obligations to passengers of the owner and master of a  
23 wrecked vessel or a vessel that is unable to proceed on a  
24 voyage; and
  - 25 (b) the landing of passengers at a port other than in accordance  
26 with a contract.

27 *Loading of cargo and livestock*

- 28 (4) The regulations may make provision in relation to the carriage on a  
29 vessel of cargo and livestock.
- 30 (5) Without limiting subsection (4), the regulations may make  
31 provision in relation to the following:
-

**Chapter 3** Vessel safety

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- 1 (a) the loading, stowing or carriage of cargo or livestock in  
2 vessels;  
3 (b) the unloading of cargo and livestock from vessels;  
4 (c) the giving of notices relating to a matter referred to in  
5 paragraph (a) or (b).

6 *Dangerous goods*

7 (6) The regulations may make provision in relation to the carriage of  
8 dangerous goods.

9 (7) Without limiting subsection (6), the regulations may make  
10 provision in relation to the following:

- 11 (a) the classes of vessels in which dangerous goods may be  
12 carried;  
13 (b) the quantities of dangerous goods that may be carried from  
14 an Australian port;  
15 (c) the precautions to be observed in connection with loading or  
16 unloading dangerous goods at an Australian port;  
17 (d) the conditions as to the packing and stowing of dangerous  
18 goods loaded at an Australian port, and the ventilation of  
19 holds containing such goods.  
20

1 **Division 3—Regulations relating to overloading**

2 **113 Regulations relating to overloading**

3 The regulations may make provision in relation to the following:

- 4 (a) when a vessel is overloaded;
- 5 (b) the giving of notices relating to the overloading of a vessel.
- 6

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

3 **Subdivision A—Loading**

4 **114 Proper precautions in loading a vessel**

- 5 (1) A person who is involved in an activity of packing, sending,  
6 stowing, loading, unloading, securing or carrying cargo, livestock  
7 or ship's stores on a vessel contravenes this subsection if:  
8 (a) the person does not:  
9 (i) ensure, so far as is reasonably practicable, that the  
10 activity is carried out in such a way that it does not  
11 damage the vessel, risk the safety of a person or damage  
12 the environment; and  
13 (ii) carry out, or arrange the carrying out of, such  
14 procedures as may be necessary for compliance with  
15 subparagraph (i); and  
16 (b) in the case of a foreign vessel—when the activity concerned  
17 occurs, the vessel is:  
18 (i) in an Australian port; or  
19 (ii) entering or leaving an Australian port; or  
20 (iii) in the internal waters of Australia; or  
21 (iv) in the territorial sea of Australia, other than in the  
22 course of innocent passage.
- 23 (2) Without limiting subsection (1), an owner of a vessel contravenes  
24 that subsection if the owner does not implement and maintain a  
25 safety management system that ensures, so far as is reasonably  
26 practicable, that an activity referred to in that paragraph is carried  
27 out in such a way that it does not damage the vessel, risk the safety  
28 of a person or damage the environment.

29 *Fault-based offence*

- 30 (3) A person commits an offence if the person:  
31 (a) contravenes subsection (1); and

1 (b) is reckless as to whether the activity that constitutes the  
2 contravention risks damaging the vessel, the safety of a  
3 person or damaging the environment.

4 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

5 *Civil penalty*

6 (4) A person is liable to a civil penalty if the person contravenes  
7 subsection (1).

8 Civil penalty: 600 penalty units.

9 **Subdivision B—Dangerous goods**

10 **115 Carrying improperly labelled dangerous goods on a vessel**

11 (1) A person contravenes this subsection if:

- 12 (a) the person carries dangerous goods on board, or causes or  
13 permits dangerous goods to be placed for carriage on board, a  
14 regulated Australian vessel or a foreign vessel; and  
15 (b) the outside of the package containing the goods is not  
16 distinctly marked with a correct description of the goods; and  
17 (c) if the vessel is a foreign vessel—at the time when the goods  
18 are carried or placed on board the vessel, the vessel is:  
19 (i) in an Australian port; or  
20 (ii) entering or leaving an Australian port; or  
21 (iii) in the internal waters of Australia; or  
22 (iv) in the territorial sea of Australia, other than in the  
23 course of innocent passage.

24 *Fault-based offence*

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

27 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

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1 *Civil penalty*

2 (3) A person is liable to a civil penalty if the person contravenes  
3 subsection (1).

4 Civil penalty: 600 penalty units.

5 **116 Requirement to give a description to master or owner of**  
6 **dangerous goods on a vessel**

7 (1) A person contravenes this subsection if:

8 (a) the person causes or permits dangerous goods to be placed on  
9 board a vessel; and

10 (b) the person is not the owner or master of the vessel; and

11 (c) a description in writing of the goods, additional to the  
12 description contained in the ordinary shipping documents  
13 related to the vessel, is not given to the owner or master of  
14 the vessel at or before the time the goods are placed on board  
15 the vessel; and

16 (d) if the vessel is a foreign vessel—at the time when the goods  
17 are placed on board the vessel, the vessel is:

18 (i) in an Australian port; or

19 (ii) entering or leaving an Australian port; or

20 (iii) in the internal waters of Australia; or

21 (iv) in the territorial sea of Australia, other than in the  
22 course of innocent passage.

23 *Fault-based offence*

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

26 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

27 *Civil penalty*

28 (3) A person is liable to a civil penalty if the person contravenes  
29 subsection (1).

30 Civil penalty: 600 penalty units.

1 **117 Carrying etc. dangerous goods under a false description**

- 2 (1) A person contravenes this subsection if:
- 3 (a) the person carries dangerous goods on board a vessel under a
- 4 false description, or causes or permits dangerous goods to be
- 5 carried on board a vessel under a false description; and
- 6 (b) if the vessel is a foreign vessel—at the time when the goods
- 7 are carried, the vessel is:
- 8 (i) in an Australian port; or
- 9 (ii) entering or leaving an Australian port; or
- 10 (iii) in the internal waters of Australia; or
- 11 (iv) in the territorial sea of Australia, other than in the
- 12 course of innocent passage.

13 *Fault-based offence*

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

16 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

17 *Civil penalty*

- 18 (3) A person is liable to a civil penalty if the person contravenes
- 19 subsection (1).

20 Civil penalty: 600 penalty units.

21 **118 Falsely describing the sender of dangerous goods**

- 22 (1) A person contravenes this subsection if:
- 23 (a) dangerous goods are or will be carried on a vessel; and
- 24 (b) the person describes the sender of the goods:
- 25 (i) on the packaging containing the goods; or
- 26 (ii) on any document relating to the carrying of the goods;
- 27 and
- 28 (c) the description is false or misleading in a material particular.

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**Part 4** Passenger and cargo operations, and overloading

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

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1 *Fault-based offence*

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

4 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

5 *Civil penalty*

6 (3) A person is liable to a civil penalty if the person contravenes  
7 subsection (1).

8 Civil penalty: 600 penalty units.

9 **119 Notice of intention to ship**

10 (1) Before dangerous goods are shipped in a regulated Australian  
11 vessel or a foreign vessel, the shipper must give notice of his or her  
12 intention, in the manner and to the person prescribed by the  
13 regulations, to ship the goods.

14 *Fault-based offence*

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

17 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

18 *Civil penalty*

19 (3) A person is liable to a civil penalty if the person contravenes  
20 subsection (1).

21 Civil penalty: 600 penalty units.

22 **120 Powers of owner or master as to dangerous goods**

23 The owner or master of a vessel may:

- 24 (a) refuse to carry any dangerous goods; and  
25 (b) open and inspect any package suspected of containing  
26 dangerous goods;

27 and is not to be subject to any liability of any kind for so doing.



1 **Subdivision C—Other offences**

2 **121 Obstructing vessel or machinery**

- 3 (1) A passenger or other person on board a vessel must not:  
4 (a) obstruct or interfere with any part of the machinery or  
5 equipment of the vessel; or  
6 (b) obstruct, hinder or harm a seafarer on board the vessel.

7 *Fault-based offence*

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

10 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

11 *Civil penalty*

- 12 (3) A person is liable to a civil penalty if the person contravenes  
13 subsection (1).

14 Civil penalty: 600 penalty units.

15 **122 Certain persons may be refused entry to or asked to leave a**  
16 **vessel**

- 17 (1) A person must not:  
18 (a) board a vessel after being refused permission to board by or  
19 on behalf of the owner or master; or  
20 (b) remain on board a vessel after being asked to leave the vessel  
21 by or on behalf of the owner or master.

22 *Fault-based offence*

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

25 Penalty: 10 penalty units.

**Chapter 3** Vessel safety

**Part 4** Passenger and cargo operations, and overloading

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

Section 123

---

1 **123 Power of master etc. to detain**

2 (1) If the master or other officer of a vessel reasonably believes that a  
3 person (the *offender*) has contravened section 121, the master or  
4 officer, or a person asked by the master or officer to assist, may  
5 detain the offender without warrant.

6 (2) A person who detains an offender under subsection (1) must, as  
7 soon as practicable after the detention, arrange for the offender,  
8 and any property found on the offender, to be delivered to a  
9 constable.  
10

1 **Part 5—Musters and drills**

2 **Division 1—Vessels to which this Part applies**

3 **124 Vessels to which this Part applies**

4 This Part applies to:

- 5 (a) regulated Australian vessels; and
- 6 (b) foreign vessels; and
- 7 (c) domestic commercial vessels; and
- 8 (d) recreational vessels.

9 Note: Section 12 may affect the application of this Chapter in certain  
10 circumstances relating to State and Territory law.

11

Section 125

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

2 **125 Regulations relating to musters, drills and tests**

3 (1) The regulations may make provision in relation to musters, drills,  
4 checks of machinery and equipment and other tests.

5 (2) Without limiting subsection (1), the regulations may make  
6 provision in relation to the following:

7 (a) boat drills, fire drills and collision drills;

8 (b) safety training and familiarisation;

9 (c) checks and tests of machinery and equipment;

10 (d) entries in a vessel's official logbook of musters, drills and  
11 safety training and familiarisation.  
12

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

3 **126 Musters and drills etc. on vessels**

- 4 (1) The master of a vessel must ensure:  
5 (a) that musters, drills and safety training and familiarisation are  
6 held in accordance with the regulations; and  
7 (b) that entries are made in the vessel's official logbook, in  
8 accordance with the regulations, in relation to musters, drills  
9 and safety training and familiarisation.

- 10 (2) Without limiting subsection (1), the master of a vessel contravenes  
11 that subsection if the master does not implement and maintain a  
12 safety management system that ensures that the musters, drills and  
13 safety training and familiarisation are held.

14 *Fault-based offence*

- 15 (3) A person commits an offence if the person contravenes  
16 subsection (1).

17 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

18 *Civil penalty*

- 19 (4) A person is liable to a civil penalty if the person contravenes  
20 subsection (1).

21 Civil penalty: 3,000 penalty units.

22 **127 Machinery and equipment checks and tests on vessels**

- 23 (1) The master of a regulated Australian vessel or a foreign vessel  
24 must ensure:  
25 (a) that checks and tests of the machinery and equipment of the  
26 vessel are conducted as required by the regulations; and  
27 (b) that entries are made in the vessel's official logbook, in  
28 accordance with the regulations, in relation to such checks  
29 and tests.

**Chapter 3** Vessel safety

**Part 5** Musters and drills

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

Section 127

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1                   (2) Without limiting subsection (1), the master of a vessel contravenes  
2                   that subsection if the master does not implement and maintain a  
3                   safety management system that ensures that the checks and tests  
4                   are carried out, and the entries are made.

5                   *Fault-based offence*

6                   (3) A person commits an offence if the person contravenes  
7                   subsection (1).

8                   Penalty: Imprisonment for 5 years or 300 penalty units, or both.

9                   *Civil penalty*

10                  (4) A person is liable to a civil penalty if the person contravenes  
11                  subsection (1).

12                  Civil penalty:           3,000 penalty units.  
13

1 **Chapter 4—Prevention of pollution**

2 **Part 1—Preliminary**  
3

4 **128 Simplified outline of this Chapter**

- 5 (1) This Chapter deals with pollution from vessels.
- 6 (2) Part 2 provides for pollution certificates for regulated Australian  
7 vessels and certain other Australian vessels. It provides for  
8 offences and civil penalty provisions that apply in relation to taking  
9 regulated Australian vessels and certain other Australian vessels to  
10 sea without pollution certificates.
- 11 (3) Part 3 provides for offences and civil penalties for polluting the  
12 marine environment.
- 13 (4) Part 4 enables directions to be given to foreign vessels in certain  
14 circumstances relating to the Prevention of Pollution Convention.  
15

1 **Part 2—Pollution certificates**

2 **Division 1—Vessels to which this Part applies**

3 **129 Vessels to which this Part applies**

4 This Part applies to:

- 5 (a) regulated Australian vessels; and  
6 (b) domestic commercial vessels; and  
7 (c) recreational vessels that have Australian nationality.

8 Note: Section 12 may affect the application of this Chapter in certain  
9 circumstances relating to State and Territory law.

10



1 **Division 2—Regulations relating to pollution certificates**

2 **130 Regulations relating to pollution certificates**

- 3 (1) The regulations may make provision in relation to pollution  
4 certificates.
- 5 (2) Without limiting subsection (1), the regulations may make  
6 provision in relation to giving effect to the Prevention of Pollution  
7 Convention.
- 8 (3) The regulations may provide that specified classes of vessels are  
9 required to have specified pollution certificates, either generally or  
10 in specified circumstances, including certificates relating to the  
11 following:
- 12 (a) vessel construction or equipment;
  - 13 (b) carriage of noxious liquids or oil;
  - 14 (c) carriage of packaged harmful substances;
  - 15 (d) sewage or garbage;
  - 16 (e) air pollution or ozone depleting substances;
  - 17 (f) energy efficiency.
- 18

1 **Division 3—Issue of pollution certificates**

2 **131 Persons may apply for a pollution certificate**

- 3 (1) A person may apply to an issuing body for a pollution certificate of  
4 a kind specified in the regulations for a vessel.
- 5 (2) The application must be in accordance with the regulations.

6 **132 Issue of pollution certificate**

- 7 (1) An issuing body may issue a pollution certificate for a vessel if:  
8 (a) an application for the certificate has been made under  
9 section 131; and  
10 (b) the issuing body is satisfied that the criteria prescribed by the  
11 regulations in relation to the issue of the certificate are met.
- 12 (2) A pollution certificate is subject to:  
13 (a) the conditions (if any) prescribed by the regulations; and  
14 (b) the conditions (if any) imposed by the issuing body.
- 15 (3) Conditions prescribed by the regulations or imposed by the issuing  
16 body include, but are not limited to, conditions relating to  
17 compliance with specified standards.

18 **133 Issuing body may vary pollution certificate**

- 19 (1) An issuing body may vary a pollution certificate if the issuing body  
20 is satisfied that the criteria prescribed by the regulations in relation  
21 to the variation of the certificate are met.
- 22 (2) Without limiting subsection (1), an issuing body may vary a  
23 pollution certificate to impose a condition on the certificate.

24 **134 Revocation of pollution certificates**

- 25 An issuing body may revoke a pollution certificate if the issuing  
26 body is satisfied that the criteria prescribed by the regulations in  
27 relation to the revocation of the certificate are met.

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

**135 Taking vessels to sea without pollution certificates—owner**

- (1) The owner of a vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:
- (a) the vessel is required by the regulations to have a pollution certificate of a specified kind; and
  - (b) a pollution certificate of that kind is not in force for the vessel.

*Fault-based offence*

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

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

*Civil penalty*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

**136 Taking vessels to sea without pollution certificates—master**

- (1) The master of a vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:
- (a) the vessel is required by the regulations to have a pollution certificate of a specified kind; and
  - (b) a pollution certificate of that kind is not in force for the vessel.

*Fault-based offence*

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

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

**Chapter 4** Prevention of pollution

**Part 2** Pollution certificates

**Division 4** Offences and civil penalties relating to vessels operating without pollution certificates

**Section 137**

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1 *Civil penalty*

2 (3) A person is liable to a civil penalty if the person contravenes  
3 subsection (1).

4 Civil penalty: 6,000 penalty units.

5 **137 Obligation to notify alterations of vessels that relate to pollution**  
6 **certificates**

7 (1) A person contravenes this subsection if:

8 (a) the person is the owner or master of a vessel; and

9 (b) the vessel is altered so as to affect the pollution certificates  
10 the vessel is required to have; and

11 (c) AMSA, and each issuing body that issued a pollution  
12 certificate for the vessel, are not informed of the alterations  
13 within the period prescribed by the regulations.

14 *Fault-based offence*

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

17 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

18 *Civil penalty*

19 (3) A person is liable to a civil penalty if the person contravenes  
20 subsection (1).

21 Civil penalty: 3,000 penalty units.  
22

1 **Part 3—Pollution or damage to the marine**  
2 **environment**

3 **Division 1—Vessels to which this Part applies**

4 **138 Vessels to which this Part applies**

5 This Part applies to:

- 6 (a) regulated Australian vessels; and  
7 (b) domestic commercial vessels; and  
8 (c) foreign vessels; and  
9 (d) recreational vessels.

10 **139 Geographical application**

- 11 (1) This Part applies to a vessel situated in any of the following areas:  
12 (a) waters within the coastal sea of Australia;  
13 (b) waters within the exclusive economic zone of Australia;  
14 (c) waters that are beyond the exclusive economic zone of  
15 Australia.
- 16 (2) Section 9 does not apply to an offence against Division 2 or a civil  
17 penalty provision in Division 2.
- 18 (3) The master or owner of a foreign vessel, or a recreational vessel  
19 that does not have Australian nationality:  
20 (a) does not commit an offence against Division 2 that relates to  
21 the vessel; and  
22 (b) is not liable for a civil penalty for a contravention of a civil  
23 penalty provision in Division 2 that relates to the vessel;  
24 unless, at the time when the conduct constituting the alleged  
25 offence or contravention occurs, the vessel is:  
26 (c) in an Australian port; or  
27 (d) entering or leaving an Australian port; or  
28 (e) in the internal waters of Australia; or  
29 (f) in the territorial sea of Australia; or  
30 (g) in the exclusive economic zone of Australia.

1       **Division 2—Vessels polluting or damaging the Australian**  
2                                   **marine environment**

3       **140 Operating a vessel so as to pollute or damage the Australian**  
4                                   **marine environment**

- 5                   (1) The master of a vessel must not operate the vessel in a manner that  
6                   causes:
- 7                   (a) pollution to the marine environment in the coastal sea of
  - 8                   Australia or the exclusive economic zone of Australia; or
  - 9                   (b) damage to the marine environment in the coastal sea of
  - 10                   Australia or the exclusive economic zone of Australia.

11                                   *Fault-based offence*

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

14                   Penalty: 600 penalty units.

- 15                   (3) Recklessness or negligence is the fault element for:
- 16                   (a) the manner of operation of the vessel; and
  - 17                   (b) the result mentioned in paragraph (1)(a) or (b) occurring.

18                                   *Civil penalty*

- 19                   (4) A person is liable to a civil penalty if the person contravenes  
20                   subsection (1).

21                   Civil penalty:

- 22                   (a) for an aggravated contravention—6,000 penalty units; or
- 23                   (b) in any other case—600 penalty units.

24       **141 Failure to ensure vessel is operated so as not to cause pollution**  
25                                   **or damage to the Australian marine environment**

- 26                   (1) The master of a vessel must ensure that the vessel is operated in a  
27                   manner that does not cause:
- 28                   (a) pollution to the marine environment in the coastal sea of
  - 29                   Australia or the exclusive economic zone of Australia; and
-

1 (b) damage to the marine environment in the coastal sea of  
2 Australia or the exclusive economic zone of Australia.

3 *Fault-based offence*

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

6 Penalty: 600 penalty units.

7 (3) Recklessness or negligence is the fault element for:

8 (a) the operation of the vessel in a manner that causes the result  
9 mentioned in paragraph (1)(a) or (b); and

10 (b) the result mentioned in paragraph (1)(a) or (b) occurring.

11 *Civil penalty*

12 (4) A person is liable to a civil penalty if the person contravenes  
13 subsection (1).

14 Civil penalty:

15 (a) for an aggravated contravention—6,000 penalty units; or

16 (b) in any other case—600 penalty units.  
17

**Chapter 4** Prevention of pollution

**Part 3** Pollution or damage to the marine environment

**Division 3** Australian vessels polluting or damaging the marine environment outside Australia

Section 142

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1 **Division 3—Australian vessels polluting or damaging the**  
2 **marine environment outside Australia**

3 **142 Operating a vessel so as to pollute or damage the marine**  
4 **environment outside Australia**

- 5 (1) The master of a regulated Australian vessel, a domestic  
6 commercial vessel, or a recreational vessel that has Australian  
7 nationality, must not operate the vessel in a manner that causes:  
8 (a) pollution to the marine environment in seas that are beyond  
9 the territorial sea and the exclusive economic zone of  
10 Australia; or  
11 (b) damage to the marine environment in seas that are beyond  
12 the territorial sea and the exclusive economic zone of  
13 Australia.

14 *Fault-based offence*

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

17 Penalty: 600 penalty units.

- 18 (3) Recklessness or negligence is the fault element for:  
19 (a) the manner of operation of the vessel; and  
20 (b) the result mentioned in paragraph (1)(a) or (b) occurring.

21 *Civil penalty*

- 22 (4) A person is liable to a civil penalty if the person contravenes  
23 subsection (1).

24 Civil penalty:

- 25 (a) for an aggravated contravention—6,000 penalty units; or  
26 (b) in any other case—600 penalty units.



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

(1) The master of a regulated Australian vessel, a domestic commercial vessel or a recreational vessel that has Australian nationality must ensure that the vessel is operated in a manner that does not cause:

(a) pollution to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia; or

(b) damage to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia.

*Fault-based offence*

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

Penalty: 600 penalty units.

(3) Recklessness or negligence is the fault element for:

(a) the manner of operation of the vessel; and

(b) the result mentioned in paragraph (1)(a) or (b) occurring.

*Civil penalty*

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

(a) for an aggravated contravention—6,000 penalty units; or

(b) in any other case—600 penalty units.

**Chapter 4** Prevention of pollution

**Part 3** Pollution or damage to the marine environment

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

Section 144

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1 **Division 4—Aggravated contraventions of civil penalty**  
2 **provisions and matters to which eligible court**  
3 **may have regard in determining standard of care**  
4 **etc.**

5 **144 Aggravated contraventions of civil penalty provisions**

- 6 (1) A contravention of a civil penalty provision of this Part by a person  
7 is an *aggravated contravention* if the person's act or omission that  
8 constituted the contravention:  
9 (a) resulted in serious harm to the marine environment; or  
10 (b) had the potential to cause serious harm to the marine  
11 environment.
- 12 (2) In determining whether an act or omission has resulted in serious  
13 harm to the marine environment, the eligible court may have  
14 regard to the following:  
15 (a) the harm;  
16 (b) the size of the affected environment;  
17 (c) the sensitivity of the affected environment;  
18 (d) the significance of the affected environment;  
19 (e) whether the harm is irreversible;  
20 (f) the measures required to remedy the harm.
- 21 (3) In determining whether an act or omission had the potential to  
22 cause serious harm to the marine environment, the eligible court  
23 may have regard to the following:  
24 (a) the potential harm;  
25 (b) the size of the potentially affected environment;  
26 (c) the sensitivity of the potentially affected environment;  
27 (d) the significance of the potentially affected environment;  
28 (e) whether the harm would have been irreversible, had it  
29 occurred;  
30 (f) the measures that would have been required to remedy the  
31 harm, had it occurred.

Section 145

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- 1 (4) If AMSA intends to prove that the person has committed an  
2 aggravated contravention, AMSA's application for a civil penalty  
3 order in relation to the contravention must specify the relevant  
4 aggravated contravention.
- 5 (5) If, in proceedings for a civil penalty order in relation to an  
6 aggravated contravention of a provision of this Part, the eligible  
7 court:
- 8 (a) is not satisfied that the person has committed an aggravated  
9 contravention of that provision; and
- 10 (b) is satisfied beyond reasonable doubt that the person has  
11 contravened that provision;
- 12 the eligible court may make a civil penalty order against the person  
13 not for the aggravated contravention but for the contravention of  
14 that provision.

15 **145 Matters to which eligible court may have regard in determining**  
16 **standard of care and risk**

- 17 In determining the standard of care a reasonable person would  
18 exercise in operating a vessel and whether there was a risk that a  
19 result mentioned in a provision of this Part would happen, the  
20 matters to which the eligible court may have regard include the  
21 following:
- 22 (a) the characteristics of the vessel;
- 23 (b) the vessel's cargo and the risks of pollution or damage to the  
24 marine environment if that cargo is released;
- 25 (c) the amount of bunker oil on board the vessel and the risk of  
26 pollution or damage to the marine environment if that amount  
27 of oil is released;
- 28 (d) the state of visibility;
- 29 (e) the state of the wind, sea and current;
- 30 (f) the presence of other vessels in the vicinity;
- 31 (g) the presence of navigation hazards in the vicinity;
- 32 (h) the rules under the Prevention of Collisions Convention;
- 33 (i) operational requirements imposed by law.
- 34

1 **Part 4—Directions powers relating to foreign**  
2 **vessels**

3 **Division 1—Vessels to which this Part applies**

4 **146 Vessels to which this Part applies**

5 This Part applies to foreign vessels.

6 Note: Section 12 may affect the application of this Chapter in certain  
7 circumstances relating to State and Territory law.

8

1 **Division 2—Directions may be given to vessels**

2 **147 Directions in relation to vessels**

- 3 (1) If AMSA is satisfied that a vessel is not constructed, equipped or  
4 operated in accordance with the Prevention of Pollution  
5 Convention (whether or not the vessel is required to be so  
6 constructed, equipped or operated), AMSA may give to the master  
7 or the owner of a vessel a written direction that requires one or  
8 more of the following:
- 9 (a) that the vessel not enter or use any port, or a specified port or  
10 specified ports, in Australia or the exclusive economic zone  
11 of Australia;
  - 12 (b) that the vessel comply with specified requirements while it:
    - 13 (a) is approaching, entering, or using any port, or a  
14 specified port or specified ports, in Australia or the  
15 exclusive economic zone of Australia; or
    - 16 (b) is in or is leaving any port, or a specified port or  
17 specified ports, in Australia or the exclusive economic  
18 zone of Australia.
- 19 (2) AMSA may exercise its powers under subsection (1) in relation to  
20 a vessel only to the extent that AMSA is satisfied that it is  
21 necessary or expedient to do so for the protection of the  
22 environment.
- 23 (3) A direction under subsection (1) is not a legislative instrument.

24 **148 Persons must comply with direction**

- 25 (1) A person who is given a direction under section 147 must comply  
26 with the direction.
- 27 (2) Subsection (1) does not apply if:
- 28 (a) the failure to comply with the direction resulted from the  
29 need to save life at sea or was due to an emergency involving  
30 a threat to a person's life; or
  - 31 (b) compliance with the direction was not possible.

Section 149

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1

*Fault-based offence*

2

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

3

4

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

5

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

6

7

*Civil penalty*

8

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

9

10

Civil penalty: 6,000 penalty units.

11

- (5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

12

13

14 **149 Geographical application**

15

- (1) Section 9 does not apply to:

16

(a) an offence against subsection 148(3); or

17

(b) a contravention of subsection 148(1), so far as it is a civil penalty provision.

18

19

- (2) The master or owner of a foreign vessel who is given a direction under section 147:

20

21

(a) does not commit an offence against subsection 148(3) that relates to the vessel; and

22

23

(b) is not liable for a civil penalty for a contravention of subsection 148(1) that relates to the vessel;

24

25

unless, at the time when the conduct constituting the alleged offence or contravention occurs, the vessel concerned is:

26

27

(c) in an Australian port; or

28

(d) entering or leaving an Australian port; or

29

(e) in the internal waters of Australia; or

30

(f) in the territorial sea of Australia; or

31

(g) in the exclusive economic zone of Australia.

1 **Chapter 5—Tonnage**

2 **Part 1—Preliminary**  
3

4 **150 Simplified outline of this Chapter**

5 This Chapter deals with the tonnage of certain vessels.

6 **151 Vessels to which this Chapter applies**

7 This Chapter applies to:

- 8 (a) regulated Australian vessels; and  
9 (b) foreign vessels; and  
10 (c) such other vessels as are prescribed by the regulations.

11 **152 Certain vessels taken to be registered**

- 12 (1) For the purposes of this Chapter, an unregistered vessel flying the  
13 flag of a country is taken to be registered in that country.
- 14 (2) If a vessel is in the course of construction, or the construction of a  
15 vessel has been completed, and the vessel:  
16 (a) has not been registered and is not flying the flag of a country;  
17 and  
18 (b) is intended to be registered in a particular country;  
19 the vessel is taken, for the purposes of this Chapter, to be registered  
20 in that country.  
21

1  
2

## Part 2—Tonnage regulations and certificates

3

### 153 Tonnage regulations

4

(1) The regulations may make provision:

5

(a) giving effect to the Tonnage Convention; and

6

(b) otherwise in relation to the tonnage of vessels.

7

(2) Without limiting subsection (1), the regulations may make provision in relation to the following:

8

9

(a) issuing International Tonnage Certificates (1969);

10

(b) issuing other tonnage measurement certificates;

11

(c) assigning tonnages to vessels;

12

(d) measuring of tonnage of vessels.

13

### 154 Applications for tonnage certificates

14

(1) A person may apply to an issuing body for a tonnage certificate of a kind specified in the regulations for a vessel to which this Chapter applies.

15

16

17

(2) The application must be in accordance with the regulations.

18

### 155 Issuing body to issue tonnage certificates

19

(1) An issuing body may issue a tonnage certificate for a vessel if:

20

(a) an application for the tonnage certificate has been made to the issuing body under section 154; and

21

22

(b) the issuing body is satisfied that the criteria prescribed by the regulations in relation to the issue of the tonnage certificate are met.

23

24

25

(2) A tonnage certificate is subject to:

26

(a) the conditions (if any) prescribed by the regulations; and

27

(b) the conditions (if any) imposed by the issuing body.



1 **156 Issuing body may vary tonnage certificates**

2 (1) An issuing body may vary a tonnage certificate under this section  
3 if the issuing body is satisfied that the criteria prescribed by the  
4 regulations in relation to the variation of the certificate are met.

5 (2) Without limiting subsection (1), an issuing body may vary a  
6 tonnage certificate to impose, vary or remove a condition on the  
7 certificate.

8 **157 Revocation of tonnage certificates**

9 An issuing body may revoke a tonnage certificate if the issuing  
10 body is satisfied that the criteria prescribed by the regulations are  
11 met in relation to the revocation of the certificate.  
12

Section 158

---

1 **Part 3—Additional provisions relating to**  
2 **non-Tonnage Convention vessels**  
3

4 **158 Register tonnage of non-Tonnage Convention vessels that are**  
5 **registered**

6 *Register tonnage of vessel registered in prescribed country*

- 7 (1) The register tonnage specified in the certificate of registry of a  
8 non-Tonnage Convention vessel registered in a country prescribed  
9 by the regulations is taken, for the purposes of this Act, to be the  
10 register tonnage of the vessel.

11 *Register tonnage of vessel registered in a country other than a*  
12 *prescribed country*

- 13 (2) The register tonnage of a non-Tonnage Convention vessel that is  
14 registered in a country that is not a country prescribed by the  
15 regulations is taken, for the purposes of this Act, to be the register  
16 tonnage of the vessel determined in accordance with the  
17 regulations.

18 **159 Tonnage of non-Tonnage Convention vessels to be measured in**  
19 **certain cases**

20 If:

- 21 (a) an unregistered non-Tonnage Convention vessel enters an  
22 Australian port; or

- 23 (b) a dispute arises as to the tonnage of a non-Tonnage  
24 Convention vessel;

25 the tonnage of the vessel is to be measured in accordance with the  
26 regulations.

27 **160 Assignment of other tonnages to non-Tonnage Convention**  
28 **vessels**

- 29 (1) The regulations may assign to a non-Tonnage Convention vessel a  
30 gross tonnage and a register tonnage, instead of the gross tonnage

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and register tonnage ascertained in relation to the vessel in accordance with the other provisions of those regulations.

- (2) If the regulations assign to a non-Tonnage Convention vessel a gross tonnage and a register tonnage as mentioned in subsection (1), this Act applies in relation to the vessel as if:
- (a) references in this Act to gross tonnage were references to the gross tonnage so assigned; and
  - (b) references in this Act to register tonnage were references to the register tonnage so assigned.

1 **Chapter 6—Safety of navigation**

2 **Part 1—Preliminary**  
3

4 **161 Simplified outline of this Chapter**

- 5 (1) This Chapter deals with the safety of navigation.
- 6 (2) Part 2 deals with pilotage for certain vessels. It includes provisions  
7 relating to the following:
- 8 (a) establishing the requirements for compulsory pilotage and a  
9 procedure for seeking exemptions from the requirements;
- 10 (b) providing for the issue of licences;
- 11 (c) providing for pilots to issue certificates as evidence of the  
12 provision of pilotage;
- 13 (d) the approval and duties of pilotage providers;
- 14 (e) establishing offences and civil penalties for navigation  
15 without a licensed pilot, failure to comply with exemption  
16 conditions and false representation as a licensed pilot;
- 17 (f) providing for the reporting of movement or intended  
18 movement of vessels.
- 19 (3) Part 3 deals with prevention of collisions.
- 20 (4) Part 4 imposes obligations to render assistance and report  
21 incidents.
- 22 (5) Part 5 deals with aids to navigation. It includes provisions:
- 23 (a) empowering AMSA to acquire, establish, maintain and  
24 inspect aids to navigation; and
- 25 (b) empowering AMSA to deal with things that may interfere  
26 with safe navigation; and
- 27 (c) establishing offences and civil penalty provisions for the  
28 fouling or destruction of, or damage to or interference with,  
29 aids to navigation.
- 30 (6) Part 6 deals with safe navigation. It includes provisions about the  
31 following:

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- 1 (a) vessel traffic services (Division 2);
- 2 (b) mandatory routing (Division 3);
- 3 (c) reporting of movement of vessels (Division 4);
- 4 (d) the Australian Hydrographic Service (Division 5).
- 5

1 **Part 2—Pilotage**

2 **Division 1—Vessels to which this Part applies**

3 **162 Vessels to which this Part applies**

- 4 (1) This Part applies to a vessel:
- 5 (a) that is 70 metres or longer in length overall; or
- 6 (b) that is a loaded:
- 7 (i) oil tanker; or
- 8 (ii) chemical carrier; or
- 9 (iii) liquefied gas carrier.
- 10 (2) This Part applies to pilots and pilotage in relation to vessels
- 11 referred to in subsection (1):
- 12 (a) that are in, or in transit to or from, any waters of the coastal
- 13 sea of Australia prescribed by the regulations; or
- 14 (b) that are in any waters of the exclusive economic zone of
- 15 Australia prescribed by the regulations.
- 16 (3) This Part is not intended to affect the operation of any law of a
- 17 State or Territory governing pilots or pilotage in relation to a port
- 18 in the State or Territory that is capable of operating concurrently
- 19 with this Part.
- 20

1 **Division 2—Regulations relating to pilotage etc.**

2 **163 Regulations relating to compulsory pilotage**

- 3 (1) The regulations may make provision in relation to compulsory  
4 pilotage, including prescribing waters that are compulsory pilotage  
5 areas for the purposes of this Part.
- 6 (2) The waters that may be prescribed for the purposes of  
7 subsection (1) must be waters included within the waters  
8 prescribed by the regulations made for the purposes of subsection  
9 162(2).

10 **164 Regulations relating to licensing of pilots and pilotage providers**

- 11 (1) The regulations may make provision in relation to the licensing of  
12 pilots and pilotage providers, including standards of competence to  
13 be attained and other conditions to be satisfied by a person in order  
14 to be licensed as a pilot or a pilotage provider.

15 *Pilots*

- 16 (2) Without limiting subsection (1), the regulations may make  
17 provision in relation to:
- 18 (a) conditions as to age, character, medical fitness, nationality,  
19 citizenship or residence relating to the licensing of pilots; and  
20 (b) the instruction, training and examination of pilots, including:  
21 (i) the gaining of sea service and other experience; and  
22 (ii) the conduct of examinations; and  
23 (iii) the conditions for admission to examinations; and  
24 (iv) the appointment and remuneration of examiners.

25 *Pilotage providers and pilots*

- 26 (3) Without limiting subsection (1), the regulations may make  
27 provision in relation to the following:  
28 (a) the manner in which the attainment of a standard or the  
29 satisfaction of a condition is to be evidenced;

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- 1 (b) the issue, recall, surrender, replacement, form and recording  
2 of licences of pilots and pilotage providers;  
3 (c) the duration, variation, renewal, suspension and cancellation  
4 of such licences.

5 **165 Regulations relating to operations of licensed pilots and licensed**  
6 **pilotage providers**

- 7 (1) The regulations may make provision in relation to the operations of  
8 licensed pilots and licensed pilotage providers.
- 9 (2) Without limiting subsection (1), the regulations may make  
10 provision in relation to the following:
- 11 (a) the duties of a licensed pilot or a licensed pilotage provider  
12 and the manner of discharging those duties;
- 13 (b) the professional relationship between:  
14 (i) a licensed pilot and officers of a vessel; and  
15 (ii) a licensed pilotage provider and a licensed pilot;
- 16 (c) the provision of equipment or information by a licensed  
17 pilotage provider to a licensed pilot;
- 18 (d) matters relating to pilotage safety management systems  
19 including the content and implementation of such systems;
- 20 (e) the keeping of records;
- 21 (f) the training of pilots;
- 22 (g) the monitoring of the performance of licensed pilots and  
23 licensed pilotage providers;
- 24 (h) the professional liability of licensed pilots and licensed  
25 pilotage providers and the limitation of that liability;
- 26 (i) auditing and monitoring of licensed pilots and licensed  
27 pilotage providers.  
28



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**Division 3—Requirement to navigate with a licensed pilot**

**166 Navigating without a licensed pilot**

- (1) A person contravenes this subsection if:
- (a) the person is the master or owner of a vessel; and
  - (b) the vessel navigates without a licensed pilot in a compulsory pilotage area.

*Exceptions*

- (2) Subsection (1) does not apply to a person if:
- (a) the vessel was exempted under section 172 from the requirement to navigate with a licensed pilot in the area; and
  - (b) the navigation complied with the terms of the exemption.
- (3) Subsection (1) does not apply to a person if the vessel navigated in a compulsory pilotage area because of saving life at sea or other unavoidable cause.
- (4) Subsection (1) does not apply to the owner of the vessel if he or she took all reasonable precautions to ensure that the vessel would not navigate in a compulsory pilotage area in contravention of that subsection.

*Fault-based offence*

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

Penalty: 600 penalty units.

Note: The defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

*Civil penalty*

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

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- 1 (7) A person who wishes to rely on subsection (2), (3) or (4) in  
2 proceedings for a civil penalty order bears a legal burden in  
3 relation to the matters in the subsection concerned.

4 **167 Offences against section 166 by masters of foreign vessels**

- 5 (1) Section 9 does not apply to an offence against section 166.  
6 (2) The master of a foreign vessel does not commit an offence against  
7 section 166 unless, at the time of the act or omission constituting  
8 the alleged offence, the vessel is:  
9 (a) in an Australian port; or  
10 (b) entering or leaving an Australian port; or  
11 (c) in the internal waters of Australia; or  
12 (d) in the territorial sea of Australia.

13 **168 Representations about being a licensed pilot or pilotage**  
14 **provider**

- 15 (1) A person must not make a representation that the person is a  
16 licensed pilot or a licensed pilotage provider if the person is not a  
17 licensed pilot or a licensed pilotage provider.

18 *Strict liability offence*

- 19 (2) A person commits an offence of strict liability if the person  
20 contravenes subsection (1).

21 Penalty: 60 penalty units.

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

23 *Civil penalty*

- 24 (3) A person is liable to a civil penalty if the person contravenes  
25 subsection (1).

26 Civil penalty: 600 penalty units.

1 **169 Unlicensed person performing duties of licensed pilot or pilotage**  
2 **provider**

- 3 (1) A person contravenes this subsection if:  
4 (a) the person performs duties of a licensed pilot or a licensed  
5 pilotage provider that are prescribed by the regulations; and  
6 (b) the person is not a licensed pilot or a licensed pilotage  
7 provider, as the case may be.

8 *Fault-based offence*

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

11 Penalty: 60 penalty units.

- 12 (3) For the purposes of subsection (2), strict liability applies to  
13 paragraph (1)(b).

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

15 *Civil penalty*

- 16 (4) A person is liable to a civil penalty if the person contravenes  
17 subsection (1).

18 Civil penalty: 600 penalty units.

19 **170 Licensed pilots to issue certificates**

- 20 (1) If a licensed pilot has provided pilotage for a vessel in a  
21 compulsory pilotage area, the licensed pilot must give the master  
22 of the vessel a certificate in the approved form.  
23 (2) The licensed pilot must give the certificate to the master before  
24 disembarking from the vessel after the navigation in the area.

25 **171 Engaging an unqualified person to perform duties of licensed**  
26 **pilot**

- 27 (1) A person (the *first person*) contravenes this subsection if:

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1 (a) the first person engages another person to perform the duties  
2 of a licensed pilot under the regulations; and

3 (b) the other person is not a licensed pilot.

4 *Fault-based offence*

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

7 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

8 (3) For the purposes of subsection (2), strict liability applies to  
9 paragraph (1)(b).

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

11 *Civil penalty*

12 (4) A person is liable to a civil penalty if the person contravenes  
13 subsection (1).

14 Civil penalty: 1,200 penalty units.  
15

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

3 **172 Application for exemption**

- 4 (1) The master or an owner of a vessel may apply to AMSA for an  
5 exemption from the requirement to navigate the vessel with a  
6 licensed pilot in a compulsory pilotage area.
- 7 (2) The application must:  
8 (a) be in writing; and  
9 (b) contain the information prescribed by the regulations; and  
10 (c) be in the approved form.
- 11 (3) AMSA must, after considering the application:  
12 (a) by instrument in writing, grant or refuse to grant the  
13 exemption applied for; and  
14 (b) give the applicant a copy of the instrument and, in the case of  
15 a refusal, a statement of the reasons for that refusal.
- 16 (4) A refusal to grant the exemption applied for may be a refusal to  
17 grant the exemption at all or a refusal to grant the exemption as to a  
18 part of the vessel's proposed navigation in the compulsory pilotage  
19 area.
- 20 (5) An exemption under subsection (1) is subject to the conditions  
21 specified in the exemption.
- 22 (6) An instrument under this section granting or refusing an exemption  
23 is not a legislative instrument.

24 **173 Failure to comply with conditions of exemption**

- 25 (1) A person contravenes this subsection if:  
26 (a) the person is the master or an owner of a vessel; and  
27 (b) the vessel is navigating in a compulsory pilotage area; and  
28 (c) AMSA has granted an exemption from the requirement to  
29 navigate with a licensed pilot in respect of the navigation by  
30 the vessel in that area; and
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1 (d) the vessel, in navigating in that area, contravenes a condition  
2 to which the exemption is subject.

3 (2) Subsection (1) does not apply to the owner of the vessel if he or  
4 she took all reasonable precautions to ensure that the vessel would  
5 not navigate in a compulsory pilotage area in contravention of that  
6 subsection.

7 (3) Subsection (1) does not apply if the vessel navigated in a  
8 compulsory pilotage area because of stress of weather, saving life  
9 at sea or other unavoidable cause.

10 *Strict liability offence*

11 (4) A person commits an offence of strict liability if the person  
12 contravenes subsection (1).

13 Penalty: 60 penalty units.

14 Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

15 Note 2: The defendant bears an evidential burden in relation to the matters in  
16 subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

17 *Civil penalty*

18 (5) A person is liable to a civil penalty if the person contravenes  
19 subsection (1).

20 Civil penalty: 600 penalty units.

21 (6) A person who wishes to rely on subsection (2) or (3) in  
22 proceedings for a civil penalty order bears an evidential burden in  
23 relation to the matters in the subsection concerned.  
24

1 **Division 5—Relationship with the Great Barrier Reef**  
2 **Marine Park Act 1975**

3 **174 Part is in addition to the *Great Barrier Reef Marine Park Act***  
4 ***1975***

- 5 (1) This Part operates in addition to, and does not limit, any  
6 requirement for compulsory pilotage under the *Great Barrier Reef*  
7 *Marine Park Act 1975* within the compulsory pilotage area under  
8 that Act.
- 9 (2) A person is not liable to be prosecuted under this Act and the *Great*  
10 *Barrier Reef Marine Park Act 1975* in respect of the same act or  
11 omission.  
12

1 **Part 3—Prevention of collisions**

2 **Division 1—Vessels to which this Part applies**

3 **175 Vessels to which this Part applies**

4 *Vessels on the high seas*

- 5 (1) This Part applies to a vessel on the high seas, if the vessel is any of  
6 the following:
- 7 (a) a regulated Australian vessel;
  - 8 (b) a domestic commercial vessel;
  - 9 (c) a recreational vessel that has Australian nationality.

10 *Vessels not on the high seas*

- 11 (2) This Part applies to:
- 12 (a) a regulated Australian vessel; or
  - 13 (b) a foreign vessel; or
  - 14 (c) a domestic commercial vessel; or
  - 15 (d) a recreational vessel;
- 16 if the vessel is situated in any of the following areas:
- 17 (e) waters within the territorial sea of Australia;
  - 18 (f) unless the vessel is a foreign vessel or a recreational vessel  
19 that does not have Australian nationality—waters in the  
20 exclusive economic zone of Australia;
  - 21 (g) so far as the provision concerned gives effect to the  
22 Prevention of Collisions Convention:
    - 23 (i) the waters of the sea on the landward side of the  
24 territorial sea; or
    - 25 (ii) waters within Australia other than waters of the sea.

26 Note: Section 12 may affect the application of this Part in certain  
27 circumstances relating to the Marine Safety (Domestic Commercial  
28 Vessel) National Law or State and Territory law.  
29



1 **Division 2—Collisions, lights and signals**

2 **176 Power to make regulations relating to collisions, lights and**  
3 **signals**

- 4 (1) The regulations may make provision in relation to requirements for  
5 the prevention of collisions and may make provision in relation to  
6 the provision and use of lights and signals on vessels.
- 7 (2) Without limiting subsection (1), the regulations may make  
8 provision in relation to giving effect to the Prevention of Collisions  
9 Convention.
- 10 (3) The regulations may make provision in relation to:  
11 (a) liability for loss of life or injury to a person on board a vessel  
12 because of the fault of the vessel and one or more other  
13 vessels; and  
14 (b) the division of liability for loss if 2 or more vessels are  
15 involved or at fault in a collision; and  
16 (c) the right of contribution in relation to a collision involving 2  
17 or more vessels that results in loss of life or injury to a person  
18 on board a vessel.
- 19 (4) Regulations made for the purposes of subsection (3) may, despite  
20 section 10, be expressed to apply to a vessel referred to in  
21 paragraph 10(a) that is operated by Australia.  
22

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1 **Division 3—Operating a vessel in contravention of**  
2 **regulations**

3 **177 Operating a vessel in contravention of the regulations—owner**

- 4 (1) The owner of a vessel must not operate the vessel, or cause or  
5 permit another person to operate the vessel, if the operation of the  
6 vessel contravenes regulations made for the purposes of  
7 section 176.

8 *Fault-based offence*

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

11 Penalty: Imprisonment for 10 years or 600 penalty units, or both.

12 *Civil penalty*

- 13 (3) A person is liable to a civil penalty if the person contravenes  
14 subsection (1).

15 Civil penalty: 6,000 penalty units.

16 **178 Operating a vessel in contravention of the regulations—master**

- 17 (1) The master of a vessel must not operate the vessel, or cause or  
18 permit another person to operate the vessel, if the operation of the  
19 vessel contravenes regulations made for the purposes of  
20 section 176.

21 *Fault-based offence*

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

24 Penalty: Imprisonment for 10 years or 600 penalty units, or both.

25 *Civil penalty*

- 26 (3) A person is liable to a civil penalty if the person contravenes  
27 subsection (1).

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Civil penalty: 6,000 penalty units.

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1 **Division 4—No presumption of fault**

2 **179 No presumption of fault**

3 If a collision occurs involving one or more vessels:

- 4 (a) a vessel is not taken to be at fault merely because of a  
5 contravention of this Part in relation to the vessel; and  
6 (b) the collision is not taken to have been caused by the wrongful  
7 act, neglect, or default of a seafarer of a vessel merely  
8 because of a contravention of this Part in relation to the  
9 vessel.

10

1 **Part 4—Obligation to render assistance and report**  
2 **incidents**

3 **Division 1—Vessels to which this Part applies**

4 **180 Vessels to which this Part applies**

5 This Part applies to the following:

- 6 (a) a regulated Australian vessel;  
7 (b) a foreign vessel;  
8 (c) a domestic commercial vessel;  
9 (d) a recreational vessel.

10 Note: Section 12 may affect the application of this Part in certain  
11 circumstances relating to the Marine Safety (Domestic Commercial  
12 Vessel) Marine Safety (Domestic Commercial Vessel) National Law  
13 or State and Territory law.  
14

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1 **Division 2—Obligation to render assistance**

2 **181 Obligation to render assistance**

- 3 (1) The master of a vessel contravenes this subsection if:  
4 (a) the vessel is at sea; and  
5 (b) the master has reason to believe that one or more persons are  
6 in distress at sea; and  
7 (c) the master does not both:  
8 (i) cause the vessel to proceed as fast as practicable to the  
9 assistance of the person or persons; and  
10 (ii) inform the person or persons that the master is doing so.

- 11 (2) Subsection (1) does not apply if:  
12 (a) the master is unable to comply with paragraph (1)(c); or  
13 (b) in the special circumstances of the case, it is unreasonable or  
14 unnecessary for the master to comply with paragraph (1)(c);  
15 or  
16 (c) the master of the vessel is informed by the person or persons  
17 in distress, or by the master of another vessel, that assistance  
18 is no longer necessary; or  
19 (d) the master is informed that another vessel has been  
20 requisitioned and is complying with the requisition.

21 *Fault-based offence*

- 22 (3) A person commits an offence if the person contravenes  
23 subsection (1).

24 Penalty: Imprisonment for 4 years.

25 Note: A defendant bears an evidential burden in relation to the matter in  
26 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

27 **182 Obligation to render assistance if requisitioned**

- 28 (1) The master of a vessel that is in distress at sea may, after  
29 consulting so far as possible with the masters of vessels that  
30 answer his or her call for assistance, requisition a vessel that the  
31 master considers best able to render assistance.

- 1 (2) The master of a vessel contravenes this subsection if:  
2 (a) the vessel is requisitioned under subsection (1) by the master  
3 of another vessel that is in distress at sea; and  
4 (b) the master does not cause his or her vessel to proceed as fast  
5 as practicable to the assistance of the other vessel.
- 6 (3) Subsection (2) does not apply if:  
7 (a) the master is unable to comply with paragraph (2)(b); or  
8 (b) in the special circumstances of the case, it is unreasonable or  
9 unnecessary for the master to comply with paragraph (2)(b);  
10 or  
11 (c) the master of the vessel is informed by the person or persons  
12 in distress, or by the master of another vessel, that assistance  
13 is no longer necessary; or  
14 (d) the master is informed that another vessel has been  
15 requisitioned and is complying with the requisition.

16 *Fault-based offence*

- 17 (4) A person commits an offence if the person contravenes  
18 subsection (2).

19 Penalty: Imprisonment for 10 years.

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

22 *Requisition to assist vessel to which this Part does not apply*

- 23 (5) The master of a vessel in distress may requisition a vessel under  
24 this section even if the vessel in distress is not a vessel to which  
25 this Part applies.

26 **183 Offences against sections 181 and 182 by masters of foreign**  
27 **vessels**

- 28 (1) Section 9 does not apply to an offence against section 181 or 182.  
29 (2) The master of a foreign vessel does not commit an offence against  
30 section 181 or 182 unless, at the time of the act or omission  
31 constituting the alleged offence, the vessel is:

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- 1 (a) in an Australian port; or  
2 (b) entering or leaving an Australian port; or  
3 (c) in the internal waters of Australia; or  
4 (d) in the territorial sea of Australia.

5 **184 Obligation to record requests for assistance**

- 6 (1) The master of a vessel contravenes this subsection if the master:  
7 (a) receives information that a person or persons are in distress at  
8 sea, and does not proceed to the assistance of the person or  
9 persons in distress; and  
10 (b) is required by any law to keep a logbook for the vessel; and  
11 (c) does not record in the vessel's logbook his or her reasons for  
12 not so proceeding.

13 *Strict liability offence*

- 14 (2) A person commits an offence of strict liability if the person  
15 contravenes subsection (1).

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

17 Penalty: 50 penalty units.

18 **185 Reporting of marine incidents to AMSA—owner**

- 19 (1) An owner of a vessel contravenes this subsection if:  
20 (a) the vessel is involved in a marine incident that has affected,  
21 or is likely to affect, the safety, operation or seaworthiness of  
22 the vessel; and  
23 (b) neither the owner nor the master of the vessel gives a written  
24 report of the incident in the approved form to AMSA, within  
25 the period prescribed by the regulations, after the owner  
26 becomes aware of the incident.
- 27 (2) An owner of a vessel contravenes this subsection if:  
28 (a) the vessel is involved in, or causes, a marine incident that  
29 involves:  
30 (i) the death of a person; or  
31 (ii) serious injury to a person; or



- 1 (iii) the loss of a vessel; or  
2 (iv) the loss of a person from the vessel; or  
3 (v) significant damage to a vessel; or  
4 (vi) loss of cargo of a vessel; and  
5 (b) neither the owner nor the master of the vessel reports the  
6 incident to AMSA, within the period prescribed by the  
7 regulations, after the owner becomes aware of the incident.

8 *Fault-based offence*

- 9 (3) A person commits an offence if the person contravenes  
10 subsection (1) or (2).

11 Penalty: 60 penalty units.

12 *Civil penalty*

- 13 (4) A person is liable to a civil penalty if the person contravenes  
14 subsection (1) or (2).

15 Civil penalty: 600 penalty units.

16 **186 Reporting of marine incidents to AMSA—master**

- 17 (1) The master of a vessel contravenes this subsection if:  
18 (a) the vessel is involved in a marine incident that has affected,  
19 or is likely to affect, the safety, operation or seaworthiness of  
20 the vessel; and  
21 (b) neither the owner nor the master of the vessel gives a written  
22 report of the incident in the approved form to AMSA, within  
23 the period prescribed by the regulations, after the master  
24 becomes aware of the incident.

25 Penalty: 60 penalty units.

- 26 (2) The master of a vessel contravenes this subsection if:  
27 (a) the vessel is involved in, or causes, a marine incident that  
28 involves:  
29 (i) the death of a person; or  
30 (ii) serious injury to a person; or

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- 1 (iii) the loss of a vessel; or  
2 (iv) the loss of a person from a vessel; or  
3 (v) significant damage to a vessel; and  
4 (b) neither the owner nor the master of the vessel reports the  
5 incident to AMSA, within the period prescribed by the  
6 regulations, after the master becomes aware of the incident.

7 *Fault-based offence*

- 8 (3) A person commits an offence if the person contravenes  
9 subsection (1) or (2).

10 Penalty: 60 penalty units.

11 *Civil penalty*

- 12 (4) A person is liable to a civil penalty if the person contravenes  
13 subsection (1) or (2).

14 Civil penalty: 600 penalty units.

15 **187 Report of dangers to navigation**

- 16 (1) The master of a vessel contravenes this subsection if:  
17 (a) the master meets with, or is informed of, any serious danger  
18 to navigation on or near his or her course; and  
19 (b) the master does not, at the earliest practicable time:  
20 (i) send out to vessels in the vicinity, by all means of  
21 communication available to him or her, the safety signal  
22 prescribed by the regulations, followed by a message  
23 (the *danger message*) conveying such information as is  
24 prescribed by the regulations; and  
25 (ii) make a report to shore to the person prescribed by the  
26 regulations, and in the manner prescribed by the  
27 regulations.
- 28 (2) Subsection (1) does not apply if compliance with that subsection  
29 would interfere with the transmission of a signal of distress.

1 *Fault-based offence*

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

4 **Penalty:** Imprisonment for 12 months or 60 penalty units, or both.

5 **Note:** A defendant bears an evidential burden in relation to the matter in  
6 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

7 *Civil penalty*

8 (4) A person is liable to a civil penalty if the person contravenes  
9 subsection (1).

10 **Civil penalty:** 600 penalty units.

11 *Evidential burden*

12 (5) A person who wishes to rely on subsection (2) in proceedings for a  
13 civil penalty order bears an evidential burden in relation to the  
14 matter in that subsection.

15 *Serious danger to navigation*

16 (6) The reference in subsection (1) to a serious danger to navigation  
17 includes, but is not limited to, any of the following:

18 (a) dangerous ice;

19 (b) a dangerous derelict;

20 (c) a tropical storm;

21 (d) sub-freezing air temperature associated with gale force winds  
22 causing severe ice accretion on superstructures;

23 (e) winds of force 10 on the Beaufort scale for which no storm  
24 warning has been received.

25 *Transmission to be free of cost*

26 (7) The transmission under this section of danger messages or safety  
27 signals is to be free of cost to the vessels concerned.

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**Part 5** Aids to navigation

**Division 1** Regulations

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1 **Part 5—Aids to navigation**

2 **Division 1—Regulations**

3 **188 Regulations relating to aids to navigation**

4                   The regulations may make provision in relation to aids to  
5                   navigation.  
6

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

3 **189 Acquisition of aids to navigation by compulsory process**

4 (1) This section applies if AMSA is unable to enter into an agreement  
5 with a State or Territory for the acquisition of any particular aid to  
6 navigation belonging to that State or Territory.

7 (2) The Minister may acquire by compulsory process:

8 (a) the aid to navigation; and

9 (b) any other property used in connection with the aid to  
10 navigation; and

11 (c) so much of the land (if any) required or used for the purpose  
12 of the aid to navigation as AMSA thinks sufficient.

13 (3) The provisions of the *Lands Acquisition Act 1989* relating to the  
14 acquisition of interests in land by compulsory process and to the  
15 determination of the amount of compensation payable in respect of  
16 interests so acquired apply, so far as applicable, in relation to the  
17 acquisition of property under this section.

18 **190 Power to establish, maintain and inspect aids to navigation**

19 (1) AMSA may:

20 (a) establish and maintain aids to navigation; and

21 (b) add to, alter or remove any aid to navigation that is owned or  
22 controlled by AMSA; and

23 (c) vary the character of any aid to navigation that is owned or  
24 controlled by AMSA.

25 (2) AMSA, or a person authorised in writing by AMSA may, at any  
26 reasonable time of the day or night:

27 (a) inspect any aid to navigation or any lamp or light which, in  
28 the opinion of AMSA or the authorised person, may affect  
29 the safety or convenience of navigation, whether the aid to  
30 navigation or the lamp or light is the property of:

31 (i) a State or Territory; or

32 (ii) an agency of a State or Territory; or

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- 1 (iii) any other person; and  
2 (b) enter any property, whether public or private, for the  
3 purposes of an inspection under paragraph (a); and  
4 (c) transport, or cause to be transported, any goods through any  
5 property, whether public or private, for any purpose in  
6 connection with:  
7 (i) the maintenance of an aid to navigation that is owned or  
8 controlled by AMSA; or  
9 (ii) the establishment of any aid to navigation by AMSA.

10 **191 Other powers in relation to aids to navigation**

- 11 (1) If in AMSA's opinion it is desirable for the safety of navigation to  
12 do so, AMSA may, by notice in writing given to the owner of an  
13 aid to navigation, or a lamp or light, require the owner of the aid,  
14 lamp or light:  
15 (a) before the end of the period specified in the notice—to  
16 remove it entirely or to move it to another position; or  
17 (b) before the end of the period specified in the notice—to  
18 modify it or to alter its character to such an extent and in such  
19 a manner as AMSA specifies in the notice; or  
20 (c) in the case of a lamp or light, with effect from a day specified  
21 in the notice:  
22 (i) to refrain from lighting the lamp or light either entirely  
23 or for the period AMSA specifies in the notice; or  
24 (ii) to cease showing the lamp or light either entirely or for  
25 the period AMSA specifies in the notice.  
26 (2) The period specified in a notice referred to in paragraph (1)(a) or  
27 (b) must be at least 14 days, other than in exceptional  
28 circumstances relating to the safety of persons or vessels.  
29 (3) If the notice is not complied with, AMSA may do in regard to the  
30 aid to navigation, lamp or light anything that the owner was  
31 required by the notice to do.  
32 (4) Any expense incurred by AMSA under this section may be  
33 recovered by AMSA from the owner, as a debt due by the owner to  
34 AMSA.

- 1 (5) In this section:  
2 *owner*, of an aid to navigation, lamp or light, includes a State or  
3 Territory government, or any agency of a State or Territory, that  
4 has the control or management of the aid, lamp or light.
- 5 (6) A notice under subsection (1) is not a legislative instrument.

6 **192 Returns of aids to navigation**

- 7 (1) A harbour authority or other local authority that has control of any  
8 aid to navigation must notify AMSA of the following matters:  
9 (a) the description and situation of each aid to navigation under  
10 its control;  
11 (b) any change to the characteristics of an aid to navigation that  
12 could affect the safety of navigation.
- 13 (2) A notification under subsection (1) in relation to an aid to  
14 navigation must be made:  
15 (a) when the aid to navigation first commences operation; and  
16 (b) when the aid to navigation is decommissioned; and  
17 (c) when a change referred to in paragraph (1)(b) occurs.
- 18 (3) A notification under subsection (1) must be in accordance with the  
19 regulations.

20 *Strict liability offence*

- 21 (4) A person commits an offence of strict liability if the person  
22 contravenes subsection (1).

23 Penalty: 30 penalty units.

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

25

1 **Division 3—Offences and civil penalties relating to aids to**  
2 **navigation**

3 **Subdivision A—Failure to comply with notice**

4 **193 Failure to comply with a notice about aids to navigation**

- 5 (1) A person contravenes this subsection if:  
6 (a) the person is given a notice under subsection 191(1); and  
7 (b) the person fails to comply with the notice.

- 8 (2) Subsection (1) does not apply if the person has a reasonable  
9 excuse.

10 *Strict liability offence*

- 11 (3) A person commits an offence of strict liability if the person  
12 contravenes subsection (1).

13 Penalty: 60 penalty units.

14 Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

15 Note 2: The defendant bears an evidential burden in relation to the matter in  
16 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

17 *Civil penalty*

- 18 (4) A person is liable to a civil penalty if the person contravenes  
19 subsection (1).

20 Civil penalty: 600 penalty units.

- 21 (5) A person who wishes to rely on subsection (2) in proceedings for a  
22 civil penalty order bears an evidential burden in relation to the  
23 matter in that subsection.

24 **Subdivision B—Destruction etc. of aids to navigation**

25 **194 Intentionally destroying, fouling or damaging aids to navigation**

- 26 (1) A person contravenes this subsection if:
-



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- 1 (a) the person does an act or omits to do an act; and  
2 (b) the act or omission results in:  
3 (i) the destruction or fouling of an AMSA aid to  
4 navigation; or  
5 (ii) damage to, or reduction in or limitation of the  
6 effectiveness of, an AMSA aid to navigation; and  
7 (c) the person intends that the act or omission will have that  
8 result.
- 9 (2) Subsection (1) does not apply if:  
10 (a) the act or omission was necessary to save a life or a vessel, or  
11 to prevent pollution; and  
12 (b) the person took all reasonable steps to avoid the destruction,  
13 fouling, damage, reduction or limitation.

14 *Fault-based offence*

- 15 (3) A person commits an offence if the person contravenes  
16 subsection (1).

17 **Penalty:** Imprisonment for 10 years or 600 penalty units, or both.

18 **Note:** A defendant bears an evidential burden in relation to the matter in  
19 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

20 *Civil penalty*

- 21 (4) A person is liable to a civil penalty if the person contravenes  
22 subsection (1).

23 **Civil penalty:** 6,000 penalty units.

- 24 (5) A person who wishes to rely on subsection (2) in proceedings for a  
25 civil penalty order bears an evidential burden in relation to the  
26 matters in that subsection.

27 **195 Recklessly destroying, fouling or damaging aids to navigation**

- 28 (1) A person contravenes this subsection if:  
29 (a) the person does an act or omits to do an act; and  
30 (b) the act or omission results in:
-

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- 1 (i) the destruction or fouling of an AMSA aid to  
2 navigation; or  
3 (ii) damage to, or reduction in or limitation of the  
4 effectiveness of, an AMSA aid to navigation; and  
5 (c) the person is reckless as to whether the act or omission will  
6 have that result.
- 7 (2) Subsection (1) does not apply if:  
8 (a) the act or omission was necessary to save a life or a vessel, or  
9 to prevent pollution; and  
10 (b) the person took all reasonable steps to avoid the destruction,  
11 fouling, damage, reduction or limitation.

12 *Fault-based offence*

- 13 (3) A person commits an offence if the person contravenes  
14 subsection (1).

15 **Penalty:** Imprisonment for 5 years or 300 penalty units, or both.

16 **Note:** A defendant bears an evidential burden in relation to the matter in  
17 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

18 *Civil penalty*

- 19 (4) A person is liable to a civil penalty if the person contravenes  
20 subsection (1).

21 **Civil penalty:** 3,000 penalty units.

- 22 (5) A person who wishes to rely on subsection (2) in proceedings for a  
23 civil penalty order bears an evidential burden in relation to the  
24 matters in that subsection.

25 **196 Negligently destroying, fouling or damaging aids to navigation**

- 26 (1) A person contravenes this subsection if:  
27 (a) the person does an act or omits to do an act; and  
28 (b) the act or omission results in:  
29 (i) the destruction or fouling of an AMSA aid to  
30 navigation; or

- 1 (ii) damage to, or reduction in or limitation of the  
2 effectiveness of, an AMSA aid to navigation; and  
3 (c) the person is negligent as to whether the act or omission will  
4 have that result.
- 5 (2) Subsection (1) does not apply if:  
6 (a) the act or omission was necessary to save a life or a vessel, or  
7 to prevent pollution; and  
8 (b) the person took all reasonable steps to avoid the destruction,  
9 fouling, damage, reduction or limitation.

10 *Fault-based offence*

- 11 (3) A person commits an offence if the person contravenes  
12 subsection (1).

13 Penalty: 300 penalty units.

14 Note: A defendant bears an evidential burden in relation to the matter in  
15 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

16 *Civil penalty*

- 17 (4) A person is liable to a civil penalty if the person contravenes  
18 subsection (1).

19 Civil penalty: 1,500 penalty units.

- 20 (5) A person who wishes to rely on subsection (2) in proceedings for a  
21 civil penalty order bears an evidential burden in relation to the  
22 matters in that subsection.

23 **197 Intentionally obstructing the view of aids to navigation**

- 24 (1) A person contravenes this subsection if:  
25 (a) the person does an act or omits to do an act; and  
26 (b) the act or omission results in the obstruction of the view of an  
27 AMSA aid to navigation; and  
28 (c) the person intends that the act or omission will have that  
29 result.
- 30 (2) Subsection (1) does not apply if:
-

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1 (a) the act or omission was necessary to save a life or a vessel, or  
2 to prevent pollution; and

3 (b) the person took all reasonable steps to avoid that obstruction.

4 *Fault-based offence*

5 (3) A person commits an offence if the person contravenes  
6 subsection (1).

7 Penalty: Imprisonment for 10 years or 600 penalty units, or both.

8 Note: A defendant bears an evidential burden in relation to the matter in  
9 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

10 *Civil penalty*

11 (4) A person is liable to a civil penalty if the person contravenes  
12 subsection (1).

13 Civil penalty: 6,000 penalty units.

14 (5) A person who wishes to rely on subsection (2) in proceedings for a  
15 civil penalty order bears an evidential burden in relation to the  
16 matters in that subsection.

17 **198 Recklessly obstructing the view of aids to navigation**

18 (1) A person contravenes this subsection if:

19 (a) the person does an act or omits to do an act; and

20 (b) the act or omission results in the obstruction of the view of an  
21 AMSA aid to navigation; and

22 (c) the person is reckless as to whether the act or omission will  
23 have that result.

24 (2) Subsection (1) does not apply if:

25 (a) the act or omission was necessary to save a life or a vessel, or  
26 to prevent pollution; and

27 (b) the person took all reasonable steps to avoid that obstruction.

1                    *Fault-based offence*

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

4                    Penalty: Imprisonment for 5 years or 300 penalty units, or both.

5                    Note:            A defendant bears an evidential burden in relation to the matter in  
6                    subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

7                    *Civil penalty*

- 8                    (4) A person is liable to a civil penalty if the person contravenes  
9                    subsection (1).

10                  Civil penalty:            3,000 penalty units.

- 11                  (5) A person who wishes to rely on subsection (2) in proceedings for a  
12                  civil penalty order bears an evidential burden in relation to the  
13                  matters in that subsection.

14                  **199 Negligently obstructing the view of aids to navigation**

- 15                  (1) A person contravenes this subsection if:

- 16                          (a) the person does an act or omits to do an act; and  
17                          (b) the act or omission results in the obstruction of the view of an  
18                          AMSA aid to navigation; and  
19                          (c) the person is negligent as to whether the act or omission will  
20                          have that result.

- 21                  (2) Subsection (1) does not apply if:

- 22                          (a) the act or omission was necessary to save a life or a vessel, or  
23                          to prevent pollution; and  
24                          (b) the person took all reasonable steps to avoid that obstruction.

25                  *Fault-based offence*

- 26                  (3) A person commits an offence if the person contravenes  
27                  subsection (1).

28                  Penalty: 300 penalty units.

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1 Note: A defendant bears an evidential burden in relation to the matter in  
2 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

3 *Civil penalty*

4 (4) A person is liable to a civil penalty if the person contravenes  
5 subsection (1).

6 Civil penalty: 1,500 penalty units.

7 (5) A person who wishes to rely on subsection (2) in proceedings for a  
8 civil penalty order bears an evidential burden in relation to the  
9 matters in that subsection.

10 **200 Intentionally interfering with aids to navigation**

11 (1) A person contravenes this subsection if:

- 12 (a) the person does an act or omits to do an act; and  
13 (b) the act or omission results in an interference with the  
14 operation of, or the use by another person of, an AMSA aid  
15 to navigation; and  
16 (c) the person intends that the act or omission will have that  
17 result.

18 (2) Subsection (1) does not apply if:

- 19 (a) the act or omission was necessary to save a life or a vessel, or  
20 to prevent pollution; and  
21 (b) the person took all reasonable steps to avoid causing that  
22 interference.

23 *Fault-based offence*

24 (3) A person commits an offence if the person contravenes  
25 subsection (1).

26 Penalty: Imprisonment for 10 years or 600 penalty units, or both.

27 Note: A defendant bears an evidential burden in relation to the matter in  
28 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

1 *Civil penalty*

- 2 (4) A person is liable to a civil penalty if the person contravenes  
3 subsection (1).

4 Civil penalty: 6,000 penalty units.

- 5 (5) A person who wishes to rely on subsection (2) in proceedings for a  
6 civil penalty order bears an evidential burden in relation to the  
7 matters in that subsection.

8 **201 Recklessly interfering with aids to navigation**

- 9 (1) A person contravenes this subsection if:

- 10 (a) the person does an act or omits to do an act; and  
11 (b) the act or omission results in an interference with the  
12 operation of, or the use by another person of, an AMSA aid  
13 to navigation; and  
14 (c) the person is reckless as to whether the act or omission will  
15 have that result.

- 16 (2) Subsection (1) does not apply if:

- 17 (a) the act or omission was necessary to save a life or a vessel, or  
18 to prevent pollution; and  
19 (b) the person took all reasonable steps to avoid that interference.

20 *Fault-based offence*

- 21 (3) A person commits an offence if the person contravenes  
22 subsection (1).

23 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

24 Note: A defendant bears an evidential burden in relation to the matter in  
25 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

26 *Civil penalty*

- 27 (4) A person is liable to a civil penalty if the person contravenes  
28 subsection (1).

29 Civil penalty: 3,000 penalty units.

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- 1 (5) A person who wishes to rely on subsection (2) in proceedings for a  
2 civil penalty order bears an evidential burden in relation to the  
3 matters in that subsection.

4 **202 Negligently interfering with aids to navigation**

- 5 (1) A person contravenes this subsection if:  
6 (a) the person does an act or omits to do an act; and  
7 (b) the act or omission results in an interference with the  
8 operation of, or the use by another person of, an AMSA aid  
9 to navigation; and  
10 (c) the person is negligent as to whether the act or omission will  
11 have that result.
- 12 (2) Subsection (1) does not apply if:  
13 (a) the act or omission was necessary to save a life or a vessel, or  
14 to prevent pollution; and  
15 (b) the person took all reasonable steps to avoid that interference.

16 *Fault-based offence*

- 17 (3) A person commits an offence if the person contravenes  
18 subsection (1).

19 Penalty: 300 penalty units.

20 Note: A defendant bears an evidential burden in relation to the matter in  
21 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

22 *Civil penalty*

- 23 (4) A person is liable to a civil penalty if the person contravenes  
24 subsection (1).

25 Civil penalty: 1,500 penalty units.

- 26 (5) A person who wishes to rely on subsection (2) in proceedings for a  
27 civil penalty order bears an evidential burden in relation to the  
28 matters in that subsection.



1     **203 Intentional removal or alteration of aids to navigation**

- 2             (1) A person contravenes this subsection if:  
3                 (a) the person does an act or omits to do an act; and  
4                 (b) the act or omission results in the removal or alteration of an  
5                     AMSA aid to navigation; and  
6                 (c) the person intends that the act or omission will have that  
7                     result.

8                     *Fault-based offence*

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

11                 Penalty: Imprisonment for 10 years or 600 penalty units, or both.

12                     *Civil penalty*

- 13             (3) A person is liable to a civil penalty if the person contravenes  
14                 subsection (1).

15                 Civil penalty:             6,000 penalty units.

16     **204 Reckless removal or alteration of aids to navigation**

- 17             (1) A person contravenes this subsection if:  
18                 (a) the person does an act or omits to do an act; and  
19                 (b) the act or omission results in the removal or alteration of an  
20                     AMSA aid to navigation; and  
21                 (c) the person is reckless as to whether the act or omission will  
22                     have that result.

23                     *Fault-based offence*

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

26                 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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1 *Civil penalty*

2 (3) A person is liable to a civil penalty if the person contravenes  
3 subsection (1).

4 Civil penalty: 3,000 penalty units.

5 **205 Riding by or making fast to aids to navigation**

6 (1) A person contravenes this subsection if:

7 (a) the person rides by or makes fast to an object; and

8 (b) the object is an AMSA aid to navigation and the person is  
9 reckless as to that fact.

10 *Fault-based offence*

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

13 Penalty: 60 penalty units.

14 *Civil penalty*

15 (3) A person is liable to a civil penalty if the person contravenes  
16 subsection (1).

17 Civil penalty: 600 penalty units.

18 **Subdivision C—Other offences relating to aids to navigation**

19 **206 Trespassing on aids to navigation**

20 (1) A person must not trespass on an AMSA aid to navigation.

21 *Fault-based offence*

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

24 Penalty: 10 penalty units.

1 *Civil penalty*

- 2 (3) A person is liable to a civil penalty if the person contravenes  
3 subsection (1).

4 Civil penalty: 100 penalty units.

5 **207 Trespassing on vessels or property used by AMSA**

- 6 (1) A person contravenes this subsection if:  
7 (a) the person trespasses on a vessel or property; and  
8 (b) the vessel or property is used by, or on behalf of, AMSA in  
9 establishing, maintaining or servicing aids to navigation.

10 *Fault-based offence*

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

13 Penalty: 10 penalty units.

14 *Civil penalty*

- 15 (3) A person is liable to a civil penalty if the person contravenes  
16 subsection (1).

17 Civil penalty: 100 penalty units.

18 **208 Notice of damage to aid to navigation**

- 19 (1) A person who, or the master of a vessel that, damages an AMSA  
20 aid to navigation must, as soon as practicable having regard to the  
21 means of communication available to the person or the master,  
22 report the damage to AMSA.

23 *Fault-based offence*

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

26 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

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1 *Civil penalty*

2 (3) A person is liable to a civil penalty if the person contravenes  
3 subsection (1).

4 Civil penalty: 600 penalty units.

5 **Subdivision D—Geographical application**

6 **209 Geographical application**

7 (1) Section 9 does not apply to:

8 (a) an offence against Subdivision B; or

9 (b) a contravention of a civil penalty provision in Subdivision B.

10 (2) The master or owner of a foreign vessel, or a recreational vessel  
11 that does not have Australian nationality:

12 (a) does not commit an offence against Subdivision B that  
13 involves the vessel; and

14 (b) is not liable for a contravention of a civil penalty provision of  
15 Subdivision B that involves the vessel;

16 unless, at the time of the act or omission constituting the alleged  
17 offence or contravention, the vessel is:

18 (c) in an Australian port; or

19 (d) entering or leaving an Australian port; or

20 (e) in the internal waters of Australia; or

21 (f) in the territorial sea of Australia.  
22

1 **Division 4—Additional matters relating to aids to**  
2 **navigation**

3 **210 Liability for damage, etc.**

- 4 (1) If a person is convicted of an offence, or found to have  
5 contravened a civil penalty provision, under Division 3, an eligible  
6 court may (in addition to imposing a penalty on the person) order  
7 the person to pay an amount up to:  
8 (a) the amount of the damage caused by the offence or  
9 contravention; or  
10 (b) the cost of repairing, replacing or reinstating the aid to  
11 navigation.
- 12 (2) If an AMSA aid to navigation is removed, damaged or destroyed  
13 by a person, the person is liable to pay to AMSA the cost of  
14 repairing, replacing or reinstating the AMSA aid to navigation.
- 15 (3) If an AMSA aid to navigation is removed, damaged or destroyed  
16 by a vessel, the master and owner of the vessel are jointly and  
17 severally liable to pay to AMSA the cost of repairing, replacing or  
18 reinstating the AMSA aid to navigation.

19 **211 Transfer of aids to navigation to be valid**

- 20 (1) This section applies if AMSA has entered into an agreement with a  
21 State, a Territory or any other person, for the acquisition by AMSA  
22 of an aid to navigation.
- 23 (2) Any instrument or assurance for granting or transferring the aid to  
24 navigation to AMSA is, because of this Act, and despite anything  
25 in the law of a State or Territory, effective to vest the aid to  
26 navigation in AMSA according to its tenor.  
27

1 **Part 6—Safe navigation**

2 **Division 1—Preliminary**

3 **212 Vessels to which this Part applies**

4 This Part applies to:

- 5 (a) regulated Australian vessels; and  
6 (b) foreign vessels; and  
7 (c) domestic commercial vessels; and  
8 (d) recreational vessels.  
9

1 **Division 2—Vessel traffic services**

2 **213 Regulations relating to vessel traffic services**

- 3 (1) The regulations may make provision in relation to vessel traffic  
4 services.
- 5 (2) Without limiting subsection (1), the regulations may make  
6 provision in relation to the following:
- 7 (a) establishment and recognition of vessel traffic services;
- 8 (b) authorisation by AMSA of vessel traffic services;
- 9 (c) testing of vessel traffic services;
- 10 (d) training, certification and auditing in relation to vessel traffic  
11 services;
- 12 (e) provision of reports and information to a vessel traffic service  
13 authority by specified persons in relation to the identity,  
14 intended passage and geographical location of vessels;
- 15 (f) the form of such reports and information and the period  
16 within which such reports are to be provided.

17 **214 Liability of master or owner under vessel traffic service**  
18 **arrangements**

- 19 (1) The master of a vessel is not relieved from responsibility for the  
20 conduct and navigation of the vessel merely because the vessel is  
21 subject to vessel traffic service arrangements.
- 22 (2) A requirement under a law of the Commonwealth or of a State or  
23 Territory that vessel traffic service arrangements be complied with  
24 does not affect the liability of the owner or master of a vessel that  
25 complies with such arrangements for:
- 26 (a) loss or damage caused by the vessel; or
- 27 (b) loss or damage caused by a fault of the navigation of the  
28 vessel.

29 **215 Reports must be provided to a vessel traffic service authority**

- 30 (1) A person contravenes this subsection if:

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- 1 (a) the person is required by the regulations to provide a report  
2 or information to a vessel traffic service authority; and  
3 (b) the person does not provide the report or information.

4 *Fault-based offence*

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

7 Penalty: 240 penalty units.

8 *Civil penalty*

- 9 (3) A person is liable to a civil penalty if the person contravenes  
10 subsection (1).

11 Civil penalty: 2,400 penalty units.

12 **216 False or misleading information provided to a vessel traffic**  
13 **service authority**

- 14 (1) A person contravenes this subsection if:  
15 (a) the person provides a report or information to a vessel traffic  
16 service authority; and  
17 (b) the report or information is false or misleading in a material  
18 particular.

19 *Fault-based offence*

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

22 Penalty: 240 penalty units.

23 *Civil penalty*

- 24 (3) A person is liable to a civil penalty if the person contravenes  
25 subsection (1).

26 Civil penalty: 2,400 penalty units.



1 **217 Geographical application**

2 (1) Section 9 does not apply to:

3 (a) an offence against:

- 4 (i) regulations made for the purposes of section 213; or  
5 (ii) subsection 215(2) or 216(2); or

6 (b) a contravention of the following civil penalty provisions:

- 7 (i) a civil penalty provision in regulations made for the  
8 purposes of section 213;  
9 (ii) subsection 215(1) or 216(1).

10 (2) The master or owner of a foreign vessel, or a recreational vessel  
11 that does not have Australian nationality:

12 (a) does not commit an offence against a provision referred to in  
13 paragraph (1)(a) that relates to the vessel; and

14 (b) is not liable for a civil penalty because of a contravention of a  
15 provision referred to in paragraph (1)(b) that relates to the  
16 vessel;

17 unless, at the time of the act or omission constituting the alleged  
18 offence or contravention, the vessel concerned is:

- 19 (c) in an Australian port; or  
20 (d) entering or leaving an Australian port; or  
21 (e) in the internal waters of Australia; or  
22 (f) in the territorial sea of Australia; or  
23 (g) in the exclusive economic zone of Australia.  
24

1       **Division 3—Mandatory routeing**

2       **218 Mandatory ship routeing systems**

- 3               (1) The master of a vessel contravenes this subsection if:
- 4                     (a) a mandatory ship routeing system applies to the vessel; and
- 5                     (b) the master does not navigate in accordance with the system.
- 6               (2) Subsection (1) does not apply if the master did not navigate in
- 7                     accordance with the mandatory ship routeing system because of
- 8                     stress of weather, saving life at sea or other unavoidable cause.

9                     *Fault-based offence*

- 10               (3) A person commits an offence if the person contravenes
- 11                     subsection (1).

12                     Penalty: Imprisonment for 12 months or 60 penalty units, or both.

13                     Note:        A defendant bears an evidential burden in relation to the matter in

14                     subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

15                     *Civil penalty*

- 16               (4) A person is liable to a civil penalty if the person contravenes
- 17                     subsection (1).

18                     Civil penalty:        600 penalty units.

- 19               (5) A person who wishes to rely on subsection (2) in proceedings for a
- 20                     civil penalty order bears an evidential burden in relation to the
- 21                     matters in that subsection.

22       **219 Geographical application**

- 23               (1) Section 9 does not apply to:
- 24                     (a) an offence against subsection 218(3); or
- 25                     (b) a contravention of subsection 218(1), so far as it is a civil
- 26                     penalty provision.
- 27               (2) The master of a foreign vessel or a recreational vessel that does not
- 28                     have Australian nationality:

- 1 (a) does not commit an offence against subsection 218(3) that  
2 relates to the vessel; and  
3 (b) is not liable for a civil penalty for a contravention of  
4 subsection 218(1) that relates to the vessel;  
5 unless, at the time of the act or omission constituting the alleged  
6 offence or contravention, the vessel concerned is:  
7 (c) in an Australian port; or  
8 (d) entering or leaving an Australian port; or  
9 (e) in the internal waters of Australia; or  
10 (f) in the territorial sea of Australia; or  
11 (g) in the exclusive economic zone of Australia.

12 **220 Navigation not in accordance with mandatory ship routeing**  
13 **system to be entered in log**

- 14 (1) The master of a vessel contravenes this subsection if:  
15 (a) a mandatory ship routeing system applies to the vessel; and  
16 (b) the master does not navigate in accordance with the system;  
17 and  
18 (c) if the master of the vessel is required to keep a logbook for  
19 the vessel—the master does not enter details of that  
20 navigation in the vessel's logbook.

21 *Fault-based offence*

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

24 Penalty: 10 penalty units.

25 *Civil penalty*

- 26 (3) A person is liable to a civil penalty if the person contravenes  
27 subsection (1).

28 Civil penalty: 100 penalty units.  
29

1 **Division 4—Reporting of movement of vessels**

2 **221 Regulations relating to reporting requirements**

- 3 (1) The regulations may make provision for the reporting  
4 requirements:
- 5 (a) of foreign vessels that are in, or in the process of entering or  
6 leaving, the prescribed area in relation to a reporting matter;  
7 and  
8 (b) of all regulated Australian vessels in any area.
- 9 (2) Without limiting subsection (1), the regulations may provide for:
- 10 (a) the form and content of sailing plans for foreign vessels  
11 proposing to leave an Australian port bound for another port,  
12 whether or not the other port is an Australian port; and  
13 (b) the form and content of sailing plans for regulated Australian  
14 vessels proposing to leave a port bound for another port,  
15 whether or not the ports are Australian ports; and  
16 (c) the form and content of reports on the movement of foreign  
17 vessels entering, traversing or leaving the prescribed area in  
18 relation to a reporting matter, including reports on position,  
19 course and speed and such other matters as the regulations  
20 prescribe; and  
21 (d) the form and content of reports on the movement of regulated  
22 Australian vessels, including reports on position, course and  
23 speed and such other matters as the regulations prescribe; and  
24 (e) the requirement to notify the cancellation of sailing plans and  
25 to give additional reports on movement if a vessel deviates,  
26 by more than an amount prescribed by the regulations, from a  
27 previously indicated course; and  
28 (f) the time at which and manner in which sailing plans, reports  
29 on movements and cancellations of sailing plans are to be  
30 notified.
- 31 (3) In this section:
- 32 *prescribed area*, in relation to any reporting matter or matters,  
33 means an area of sea around Australia that comprises so much of:

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- 1 (a) the area for which Australia has responsibility for search and  
2 rescue; and  
3 (b) any area of the sea beyond the outer limits of the area  
4 referred to in paragraph (a) that is an area in respect of which  
5 Australia is required or permitted, under an international  
6 instrument, to obtain reports relating to the movement, or  
7 intended movement, of vessels;  
8 as is prescribed by the regulations for the purposes of this Division  
9 in relation to that matter or those matters.

10 **reporting matter** means any matter relating to the movement, or  
11 intended movement, of vessels, including any such matter that is  
12 referred to under an international instrument that confers rights or  
13 imposes duties on Australia as a contracting party.

14 **222 Geographical application**

- 15 (1) Section 9 does not apply to:  
16 (a) an offence against a regulation made under section 221; or  
17 (b) a civil penalty provision in regulations made for the purposes  
18 of section 221.
- 19 (2) The master or owner of a foreign vessel or a recreational vessel  
20 that does not have Australian nationality:  
21 (a) does not commit an offence against a regulation made for the  
22 purposes of section 221 that relates to the vessel; and  
23 (b) is not liable for a civil penalty for a contravention of such a  
24 regulation that relates to the vessel;  
25 unless at the time of the act or omission constituting the alleged  
26 offence or contravention, the vessel concerned is:  
27 (c) in an Australian port; or  
28 (d) entering or leaving an Australian port; or  
29 (e) in the internal waters of Australia; or  
30 (f) in the territorial sea of Australia; or  
31 (g) in the exclusive economic zone of Australia.  
32

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

4 **223 Functions of the Australian Hydrographic Service**

- 5 (1) The Australian Hydrographic Service is that part of the Australian  
6 Navy known as the Australian Hydrographic Service.
- 7 (2) The functions of the Australian Hydrographic Service are:  
8 (a) to be responsible for the provision of hydrographic services  
9 required by the Safety Convention; and  
10 (b) to collect, compile and collate hydrographic data; and  
11 (c) to maintain and disseminate hydrographic and other nautical  
12 information and nautical publications; and  
13 (d) to maintain and disseminate nautical charts, including  
14 authorising charts for use in Australian waters.

15 **224 Taking a vessel to sea without nautical charts and**  
16 **publications—owner**

- 17 (1) The owner of a regulated Australian vessel or a foreign vessel must  
18 not take the vessel to sea, or cause or permit another person to take  
19 the vessel to sea, if:  
20 (a) the vessel is not supplied with:  
21 (i) nautical charts (including charts in electronic form), of a  
22 suitable scale and properly corrected at the time of  
23 sailing; and  
24 (ii) nautical publications;  
25 necessary for use on the particular voyage; or  
26 (b) the vessel is supplied with the charts and publications  
27 referred to in paragraph (a), but free access to them is not  
28 made available to seafarers involved in the navigation of the  
29 vessel.

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*Fault-based offence*

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

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

*Civil penalty*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

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

- (1) The master of a regulated Australian vessel or a foreign vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:

(a) the vessel is not supplied with:

- (i) nautical charts (including charts in electronic form), of a suitable scale and properly corrected at the time of sailing; and

(ii) nautical publications;  
necessary for use on the particular voyage; or

(b) the vessel is supplied with the charts and publications referred to in paragraph (a), but free access to them is not made available to seafarers involved in the navigation of the vessel.

*Fault-based offence*

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

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

**Chapter 6** Safety of navigation

**Part 6** Safe navigation

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

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1

*Civil penalty*

2

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

3

4

Civil penalty:       600 penalty units.

5



1 **Chapter 7—Wrecks and salvage**

2 **Part 1—Preliminary**  
3

4 **226 Simplified outline of this Chapter**

- 5 (1) This Chapter deals with wrecks and salvage.
- 6 (2) Part 2 provides for the establishment of a regime for notifying  
7 wrecks and dealing with wrecks.
- 8 (3) Part 3 provides for the following:
- 9 (a) giving effect to the Salvage Convention;
- 10 (b) determining the scope of salvage operations that are subject  
11 to this Act;
- 12 (c) salvage claims by, or against, the Crown.  
13

1 **Part 2—Wrecks**

2 **Division 1—Wrecks to which this Part applies**

3 **227 Wrecks to which this Part applies**

4 This Part applies to any wreck of or from:

5 (a) regulated Australian vessels; and

6 (b) foreign vessels.

7

1 **Division 2—Rights and powers in relation to wrecks**

2 **228 Right of Commonwealth to unclaimed wreck**

3 The Commonwealth is entitled to all unclaimed wreck found in  
4 Australia.

5 **229 Dealing with wrecks**

6 (1) AMSA has the following powers in relation to any wreck:

- 7 (a) to require, by written notice, the legal owner of the wreck,  
8 within the period specified in the notice:  
9 (i) to remove the wreck, or a specified part of the wreck; or  
10 (ii) to give security to the satisfaction of AMSA for such  
11 removal;
- 12 (b) to require, by written notice, the legal owner of the wreck,  
13 within the period specified in the notice:  
14 (i) to mark the wreck, or a specified part of the wreck; or  
15 (ii) to give security to the satisfaction of AMSA for such  
16 marking;
- 17 (c) to mark or remove the wreck, or a part of the wreck, in any  
18 manner it sees fit, if:  
19 (i) AMSA considers it necessary for the purposes of saving  
20 human life, securing the safe navigation of vessels or  
21 protecting the marine environment; or  
22 (ii) there is no legal owner of the wreck, or AMSA cannot,  
23 despite making reasonable efforts, locate or contact the  
24 legal owner; or  
25 (iii) the legal owner does not comply with a notice given to  
26 him or her under paragraph (a) or (b) within the period  
27 specified in the notice;
- 28 (d) to destroy or sink the wreck, or a part of the wreck, in any  
29 manner it sees fit, if AMSA considers it necessary for the  
30 purposes of saving human life, securing the safe navigation  
31 of vessels or protecting the marine environment;
- 32 (e) to recover from the legal owner of the wreck any expenses  
33 incurred by AMSA in connection with locating, marking,  
34 removing, destroying or sinking the wreck.

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- 1 (2) AMSA may exercise the powers in paragraphs (1)(a) and (b) in  
2 respect of the following:  
3 (a) a wreck of, or wreck from, a regulated Australian vessel  
4 wherever it is situated;  
5 (b) a wreck of, or wreck from, a foreign vessel situated in the  
6 territorial sea of Australia.
- 7 (3) AMSA may exercise the powers referred to in paragraphs (1)(c)  
8 and (d) in respect of the following:  
9 (a) a wreck of, or wreck from, a regulated Australian vessel  
10 situated:  
11 (i) in the exclusive economic zone of Australia; or  
12 (ii) in the territorial sea of Australia;  
13 (b) a wreck of, or wreck from, a foreign vessel situated in the  
14 territorial sea of Australia.
- 15 (4) A notice under subsection (1) is not a legislative instrument.

16 **230 Person must comply with notice**

- 17 (1) A legal owner of any wreck contravenes this subsection if:  
18 (a) the owner is required under subsection 229(1) to remove or  
19 mark the wreck, or a specified part of the wreck; and  
20 (b) the owner fails to comply with the requirement.

21 *Fault-based offence*

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

24 Penalty: 600 penalty units.

25 *Civil penalty*

- 26 (3) A person is liable to a civil penalty if the person contravenes  
27 subsection (1).

28 Civil penalty: 6,000 penalty units.

1     **231 Powers to pass over land and require assistance etc.**

- 2             (1) AMSA may gain access to any wreck, including by crossing land  
3                 without the consent of the occupier of the land, for the purpose of  
4                 rendering assistance or saving life.
- 5             (2) AMSA may deposit any wreck on land without the consent of the  
6                 occupier of the land.
- 7             (3) A person must not impede AMSA in exercising its powers under  
8                 subsection (1) or (2).

9                     *Fault-based offence*

- 10            (4) A person commits an offence if the person contravenes  
11               subsection (3).

12                     Penalty: 5 years imprisonment or 300 penalty units, or both.

13                     *Civil penalty*

- 14            (5) A person is liable to a civil penalty if the person contravenes  
15               subsection (3).

16                     Civil penalty:            3,000 penalty units.

17     **232 Notification about wrecks**

- 18            (1) The master or owner of any vessel that is wrecked, stranded, sunk  
19               or abandoned or has foundered must notify AMSA within the  
20               period prescribed by the regulations of the following matters:
- 21               (a) the name and principal place of business of the owner of the  
22                 vessel;
- 23               (b) the location of the vessel;
- 24               (c) the type, size and construction of the vessel;
- 25               (d) the nature and quantity of cargo and any hazardous or  
26                 noxious substances on board the vessel;
- 27               (e) the amount and type of oil, including bunker and lubricating  
28                 oil, on board the vessel.

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1 (2) Subsection (1) does not apply to a foreign vessel if it is not situated  
2 in the territorial sea of Australia.

3 *Fault-based offence*

4 (3) A person commits an offence if the person contravenes  
5 subsection (1).

6 Penalty: 60 penalty units.

7 Note: A defendant bears an evidential burden in relation to the matter in  
8 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

9 *Civil penalty*

10 (4) A person is liable to a civil penalty if the person contravenes  
11 subsection (1).

12 Civil penalty: 600 penalty units.

13 (5) A person who wishes to rely on subsection (2) in proceedings for a  
14 civil penalty order bears an evidential burden in relation to the  
15 matter in that subsection.

16 **233 Finding or taking possession of wreck**

17 (1) A person who finds or takes possession of any wreck in, or brings  
18 any wreck into, the territorial sea of Australia must give notice to  
19 AMSA within the period prescribed by the regulations:

20 (a) that the person has found or taken possession of the wreck or  
21 brought the wreck into the territorial sea of Australia; and

22 (b) of the location of the wreck and the marks by which it may  
23 be recognised.

24 *Fault-based offence*

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

27 Penalty: 60 penalty units.

1                                    *Civil penalty*

- 2                    (3) A person is liable to a civil penalty if the person contravenes  
3                    subsection (1).

4                    Civil penalty:            180 penalty units.

5                    **234 AMSA must give notice of wreck**

- 6                    (1) This section applies if AMSA is given a notice under section 232  
7                    or 233 in relation to a vessel or any wreck, or otherwise becomes  
8                    aware of any wreck.

- 9                    (2) AMSA must, as soon as reasonably practicable after being given  
10                    the notice, or becoming aware of the wreck, publish a notice on its  
11                    website or in a nautical publication prescribed by the regulations  
12                    that sets out the details prescribed by the regulations relating to the  
13                    vessel or wreck.

14                    **235 Defacing or obliterating marks on a wreck**

- 15                    (1) A person must not do an act, or omit to do an act, if the act or  
16                    omission results, or is likely to result, in the defacement or  
17                    obliteration of a mark on:

18                    (a) a wreck of, or wreck from, a regulated Australian vessel  
19                    situated:

- 20                    (i) in the exclusive economic zone of Australia; or  
21                    (ii) in the territorial sea of Australia; or

22                    (b) a wreck of, or wreck from, a foreign vessel situated in the  
23                    territorial sea of Australia.

24                    *Fault-based offence*

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

27                    Penalty: 300 penalty units.

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1 *Civil penalty*

2 (3) A person is liable to a civil penalty if the person contravenes  
3 subsection (1).

4 Civil penalty: 900 penalty units.

5 **236 Removing a wreck without consent**

6 (1) A person must not remove any wreck if the person does not have  
7 the consent of the legal owner of the wreck or of AMSA.

8 *Fault-based offence*

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

11 Penalty: 1,200 penalty units.

12 *Civil penalty*

13 (3) A person is liable to a civil penalty if the person contravenes  
14 subsection (1).

15 Civil penalty: 6,600 penalty units.

16 **237 Powers of Customs**

17 This Part does not derogate from or interfere with the powers of  
18 Customs, the CEO of Customs or an officer of Customs conferred  
19 by any Act.

20 **238 Limits on powers to deal with wrecks**

21 (1) This section applies to the following:

22 (a) a historic wreck;

23 (b) a wreck:

24 (i) that is a historic shipwreck or historic relic within the  
25 meaning of a law of a State or of the Northern Territory  
26 that relates to shipwrecks or relics of historic  
27 significance; and



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- 1 (ii) in relation to which the provisions of that law apply.
- 2 (2) AMSA must not exercise any of the powers referred to in  
3 section 229 in relation to the wreck unless, in AMSA's opinion, it  
4 is necessary to do so for the purpose of:
- 5 (a) saving human life; or  
6 (b) securing the safe navigation of vessels; or  
7 (c) dealing with an emergency involving a serious threat to the  
8 environment.

9 **239 Certain provisions not applicable to historic wrecks**

- 10 Sections 233 and 236 do not apply to:
- 11 (a) a historic wreck; or  
12 (b) a wreck:
- 13 (i) that is a historic shipwreck or historic relic within the  
14 meaning of a law of a State or of the Northern Territory  
15 that relates to shipwrecks or relics of historic  
16 significance; and  
17 (ii) in relation to which the provisions of that law apply.  
18

1 **Part 3—Salvage**

2 **Division 1—Vessels to which this Part applies**

3 **240 Vessels to which this Part applies**

- 4 (1) Subject to subsections (2) and (3), this Part applies:  
5 (a) to all vessels; and  
6 (b) whenever judicial or arbitral proceedings relating to the  
7 provision of salvage operations are brought in Australia.
- 8 (2) This Part does not apply to fixed or floating platforms or to mobile  
9 offshore drilling units when such platforms or units are on location  
10 engaged in the exploration, exploitation or production of mineral  
11 resources of the seabed or its subsoil.
- 12 (3) This Part does not apply to any salvage operation:  
13 (a) that takes place in inland waters and that involves vessels all  
14 of which are of inland navigation; or  
15 (b) that takes place in inland waters and does not involve a  
16 vessel; or  
17 (c) to the extent that it involves property:  
18 (i) that is maritime cultural property of prehistoric,  
19 archaeological or historic interest; and  
20 (ii) that is situated on the seabed.
- 21 (4) This Part does not derogate from or interfere with the powers of  
22 Customs, the CEO of Customs or an officer of Customs conferred  
23 by any Act.  
24

1 **Division 2—Regulations relating to salvage**

2 **241 Regulations relating to salvage**

- 3 (1) The regulations may make provision in relation to:
- 4 (a) giving effect to the Salvage Convention; and
- 5 (b) salvage operations, and claims relating to salvage operations,
- 6 conducted by or on behalf of the Commonwealth, a State, a
- 7 Territory or the government of a country prescribed by the
- 8 regulations.
- 9 (2) Without limiting subsection (1), the regulations may make
- 10 provision in relation to:
- 11 (a) the action to be taken with respect to vessels and other
- 12 property saved as a result of salvage operations conducted by
- 13 or on behalf of the Commonwealth or a State or Territory;
- 14 and
- 15 (b) the execution of bonds for the payment of salvage operations
- 16 so conducted; and
- 17 (c) the taking of security for the performance of bonds executed
- 18 under regulations made for the purposes of paragraph (b);
- 19 and
- 20 (d) the adjudication on, and the enforcement of, bonds executed
- 21 under regulations made for the purposes of paragraph (b) or
- 22 under a law that is a law of a country prescribed by the
- 23 regulations and corresponds with regulations made for the
- 24 purposes of paragraph (b); and
- 25 (e) the conditions subject to which claims relating to salvage
- 26 operations may be made by the seafarers of a Government
- 27 vessel or a vessel belonging to a foreign country prescribed
- 28 by the regulations.
- 29 (3) A charge that arises under subsection (2) in relation to a vessel has
- 30 priority over any PPSA security interest within the meaning of the
- 31 *Personal Property Securities Act 2009* in the vessel.
- 32 (4) Subsection 73(2) of the *Personal Property Securities Act 2009*
- 33 applies to a charge that arises under subsection (2).



1 **Chapter 8—Enforcement**

2 **Part 1—Preliminary**  
3

4 **244 Simplified outline of this Chapter**

- 5 (1) This Chapter provides for compliance with, and enforcement of,  
6 this Act.
- 7 (2) Part 2 confers wide-ranging powers on AMSA to give directions in  
8 relation to vessels.
- 9 (3) Part 3 deals with the detention of vessels and provides an offence  
10 for operating a detained vessel. The Part also empowers Customs  
11 to refuse clearance to vessels.
- 12 (4) Part 4 provides for the appointment of inspectors and sets out their  
13 powers and functions including the following:  
14 (a) powers to board vessels;  
15 (b) powers of inspection, search and seizure;  
16 (c) powers to issue prohibition and improvement notices.
- 17 (5) Part 5 contains provisions that support the civil penalty provisions.
- 18 (6) Part 6 relates to infringement notices and voluntary enforceable  
19 undertakings.

20 **245 Vessels to which Chapter applies**

21 This Chapter applies to all vessels.  
22

1 **Part 2—Directions powers**  
2

3 **246 Directions in relation to vessels**

- 4 (1) AMSA may, by notice in writing given to the master or the owner  
5 of a vessel, give any of the following directions:  
6 (a) that the vessel not enter or use any port, or a specified port or  
7 specified ports, in Australia or the exclusive economic zone  
8 of Australia;  
9 (b) that the vessel comply with specified requirements while it:  
10 (a) is approaching, entering, or using any port, or a  
11 specified port or specified ports, in Australia or the  
12 exclusive economic zone of Australia; or  
13 (b) is in or is leaving any port, or a specified port or  
14 specified ports, in Australia or the exclusive economic  
15 zone of Australia.
- 16 (2) AMSA may give a direction under subsection (1) in relation to a  
17 foreign vessel only if the vessel is:  
18 (a) in an Australian port; or  
19 (b) entering or leaving an Australian port; or  
20 (c) in the internal waters of Australia; or  
21 (d) in the territorial sea of Australia, other than in the course of  
22 innocent passage.
- 23 (3) A direction under subsection (1) is not a legislative instrument.

24 **247 Persons must comply with directions**

- 25 (1) A person who is given a direction under section 246 must comply  
26 with the direction or ensure that the direction is complied with.
- 27 (2) Subsection (1) does not apply if non-compliance with the direction  
28 is necessary to save a person's life at sea or is due to an emergency  
29 involving a threat to a person's life.

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*Fault-based offence*

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

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

*Civil penalty*

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

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1 **Part 3—Detention powers**  
2

3 **248 Power for AMSA to detain**

- 4 (1) AMSA may detain a vessel and may also bring it, or cause it to be  
5 brought, to a port, or to another place that AMSA considers  
6 appropriate, if:  
7 (a) AMSA reasonably suspects that the vessel is unseaworthy or  
8 substandard; or  
9 (b) AMSA reasonably suspects that the vessel has been, is or will  
10 be involved in a contravention, either in or outside Australia,  
11 of this Act; or  
12 (c) AMSA reasonably suspects that a seafarer of the vessel or a  
13 person on board the vessel has been, is or will be involved in  
14 a contravention, either in or outside Australia, of this Act; or  
15 (d) both of the following apply:  
16 (i) AMSA reasonably suspects that the master of the  
17 vessel, or a seafarer of the vessel, would contravene this  
18 Act if he or she operated the vessel without a particular  
19 certificate or certificates, or other documentary  
20 evidence;  
21 (ii) the master of the vessel, or the seafarer, does not  
22 produce the certificate or certificates or the other  
23 documentary evidence to AMSA when requested to do  
24 so; or  
25 (e) a provision of this Act provides for AMSA to detain the  
26 vessel.
- 27 (2) If AMSA detains a vessel under subsection (1), AMSA must give  
28 written notice, within 14 days, to:  
29 (a) the master of the vessel; or  
30 (b) the person who had possession or control of the vessel  
31 immediately before it was detained.
- 32 (3) The notice must:  
33 (a) identify the vessel; and  
34 (b) state that the vessel has been detained; and  
35 (c) specify the reason for the detention; and



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- 1 (d) specify contact details of an inspector who can provide  
2 further information; and  
3 (e) specify any conditions to which the detention of the vessel is  
4 subject.
- 5 (4) The regulations may make provision in relation to the release of  
6 detained vessels.
- 7 (5) AMSA may detain a foreign vessel only if the vessel is:  
8 (a) in an Australian port; or  
9 (b) entering or leaving an Australian port; or  
10 (c) in the internal waters of Australia; or  
11 (d) in the territorial sea of Australia, other than in the course of  
12 innocent passage.

13 **249 Operating a detained vessel**

- 14 (1) A person must not operate a vessel if:  
15 (a) the vessel has been detained under subsection 248(1)  
16 (detention by AMSA) or 252(3) (detention by Customs); and  
17 (b) the vessel has not been released from detention; and  
18 (c) an inspector has not consented to the operation of the vessel  
19 by the person.

20 *Fault-based offence*

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

23 Penalty: Imprisonment for 10 years or 600 penalty units, or both.

24 *Civil penalty*

- 25 (3) A person is liable to a civil penalty if the person contravenes  
26 subsection (1).

27 Civil penalty: 6,000 penalty units.

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1       **250 Releasing a vessel from detention**

- 2               (1) AMSA or an officer of Customs may release a detained vessel if  
3               AMSA or the officer of Customs is satisfied that its further  
4               detention is no longer necessary.
- 5               (2) AMSA or an officer of Customs may release a detained vessel  
6               subject to conditions if AMSA or the officer of Customs considers  
7               that it is appropriate to do so.

8       **251 Costs of detention**

- 9               (1) AMSA is liable to pay to the owner of a vessel a reasonable  
10              amount of compensation:  
11              (a) for the costs of, or incidental to, the detention of the vessel;  
12              and  
13              (b) for any loss or damage incurred by the owner as a result of  
14              the detention of the vessel;  
15              if the detention of the vessel was not reasonable in the  
16              circumstances.
- 17              (2) If:  
18              (a) a vessel is detained under this Part; and  
19              (b) AMSA incurs costs in connection with, or incidental to, the  
20              detention of the vessel; and  
21              (c) the detention was reasonable in the circumstances;  
22              the owner of the vessel is liable to pay to AMSA compensation of  
23              a reasonable amount in respect of the detention of the vessel.
- 24              (3) If AMSA and the owner of the vessel do not agree on the amount  
25              of compensation payable under subsection (1) or (2), AMSA or the  
26              owner may institute proceedings in an eligible court for the  
27              recovery from the owner or AMSA of such reasonable amount of  
28              compensation as the eligible court determines.

29       **252 Power for Customs to detain or refuse clearance**

- 30              (1) This section applies if:  
31              (a) an application is made for a clearance of a vessel under the  
32              *Customs Act 1901* for a voyage from an Australian port; and

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- 1 (b) the master of the vessel would contravene a provision of this  
2 Act if he or she operated the vessel or took the vessel to sea  
3 on that voyage from that port without a particular certificate  
4 or certificates, or other documentary evidence.

5 *Master must produce certificates*

- 6 (2) The master of the vessel must, if required by an officer of Customs,  
7 produce to the officer of Customs:  
8 (a) the certificate or certificates, or the other documentary  
9 evidence; and  
10 (b) any exemption in force in respect of the vessel.

11 *Customs may detain if certificates not produced*

- 12 (3) If an officer of Customs has required the master of a vessel to  
13 produce a certificate or certificates, other documentary evidence or  
14 an exemption under subsection (2), the vessel may be detained by  
15 Customs until the certificate or certificates, other documentary  
16 evidence or exemption is produced.

- 17 (4) If Customs detains a vessel under subsection (3), an officer of  
18 Customs must give written notice, within 14 days, to:  
19 (a) the master of the vessel; or  
20 (b) the person who had possession or control of the vessel  
21 immediately before it was detained.

- 22 (5) The notice must:  
23 (a) identify the vessel; and  
24 (b) state that the vessel has been detained; and  
25 (c) specify the reason for the detention; and  
26 (d) specify contact details of an officer of Customs who can  
27 provide further information; and  
28 (e) specify any conditions to which the detention of the vessel is  
29 subject.

- 30 (6) Customs may detain a foreign vessel under this section only if the  
31 vessel is:  
32 (a) in an Australian port; or  
33 (b) entering or leaving an Australian port; or

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- 1 (c) in the internal waters of Australia; or  
2 (d) in the territorial sea of Australia, other than in the course of  
3 innocent passage.

4 **253 Refusal of clearance**

- 5 An officer of Customs may refuse to grant clearance under the  
6 *Customs Act 1901* to a vessel if:  
7 (a) the vessel is, or may be detained under section 247 or 252; or  
8 (b) the requirements of this Act in relation to the vessel or its  
9 seafarers or equipment have not been complied with.  
10

1 **Part 4—Inspectors**

2 **Division 1—Appointment of inspectors etc.**

3 **254 Appointment of inspectors**

- 4 (1) AMSA may, in writing, appoint any of the following as an  
5 inspector:  
6 (a) an officer or employee of an agency of the Commonwealth;  
7 (b) an officer or employee of an agency of a State or Territory.
- 8 (2) An inspector may exercise all of the powers of an inspector under  
9 this Act, or such of those powers as are specified in the inspector's  
10 instrument of appointment.
- 11 (3) AMSA must not appoint a person as an inspector unless AMSA is  
12 satisfied that the person has suitable qualifications or experience to  
13 properly exercise the powers of an inspector.
- 14 (4) AMSA must not appoint an officer or employee of an agency of a  
15 State or Territory as an inspector without the agreement of the  
16 State or Territory.
- 17 (5) In exercising his or her powers or performing his or her functions  
18 as an inspector, an inspector must comply with any direction of  
19 AMSA.

20 **255 Identity cards**

- 21 (1) AMSA must issue an identity card to an inspector.
- 22 (2) The identity card must:  
23 (a) be in the approved form; and  
24 (b) contain a recent photograph of the inspector; and  
25 (c) state the powers that the inspector may exercise.
- 26 (3) A person contravenes this subsection if:  
27 (a) the person has been issued with an identity card; and  
28 (b) the person ceases to be an inspector; and

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1 (c) the person does not, as soon as practicable after so ceasing,  
2 return the identity card to AMSA.

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

5 *Strict liability offence*

6 (5) A person commits an offence of strict liability if the person  
7 contravenes subsection (3).

8 Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

9 Note 2: A defendant bears an evidential burden in relation to the matter in  
10 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

11 Penalty: 1 penalty unit.

12 *Identity card to be carried*

13 (6) An inspector must carry his or her identity card at all times when  
14 exercising powers and performing functions and duties as an  
15 inspector.  
16

1 **Division 2—Search and seizure powers of inspectors**

2 **256 Inspector may enter premises by consent or under a warrant**

- 3 (1) For the purposes of finding out whether this Act is being, or has  
4 been, complied with or assessing the correctness of information  
5 provided under this Act, an inspector may:  
6 (a) enter any premises; and  
7 (b) exercise the monitoring powers set out in section 259.
- 8 (2) If an inspector has reasonable grounds for suspecting that there  
9 may be evidential material on any premises, the inspector may:  
10 (a) enter the premises; and  
11 (b) exercise the enforcement powers set out in section 260.
- 12 (3) However, an inspector is not authorised to enter premises under  
13 this section unless:  
14 (a) the occupier of the premises has consented to the entry, and  
15 the inspector has shown his or her identity card if required by  
16 the occupier; or  
17 (b) the entry is made under a warrant.

18 Note: If entry to the premises is with the occupier's consent, the inspector  
19 must leave the premises if the consent ceases to have effect: see  
20 section 271.

21 **257 Inspector may board a vessel without consent or warrant**

- 22 (1) For the purposes of finding out whether this Act is being, or has  
23 been, complied with or assessing the correctness of information  
24 provided under this Act, an inspector may:  
25 (a) board a vessel (including a wreck); and  
26 (b) exercise the monitoring powers set out in section 259.
- 27 (2) If the master of the vessel requests the inspector to produce  
28 identification, the inspector must produce his or her identity card.
- 29 (3) If the inspector fails to produce the identity card, the inspector  
30 must:  
31 (a) leave the vessel; and

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- 1 (b) not re-board the vessel without producing the identity card.
- 2 (4) An inspector must not board a foreign vessel under this section  
3 unless the vessel is:
- 4 (a) in an Australian port; or  
5 (b) entering or leaving an Australian port; or  
6 (c) in the internal waters of Australia; or  
7 (d) in the territorial sea of Australia, other than in the course of  
8 innocent passage.

9 **258 Requirement to facilitate boarding of vessels**

- 10 (1) An inspector may require a person to take reasonable steps to  
11 facilitate the boarding of the vessel under paragraph 256(1)(a) or  
12 (2)(a) or paragraph 257(1)(a).
- 13 (2) A requirement under subsection (1) may be made by any  
14 reasonable means.
- 15 (3) The requirement is made whether or not the person in charge of the  
16 vessel understands or is aware of the requirement.
- 17 (4) A person contravenes this subsection if:  
18 (a) a requirement is made of the person under subsection (1); and  
19 (b) the person fails to comply with the requirement.

20 *Strict liability offence*

- 21 (5) A person commits an offence of strict liability if the person  
22 contravenes subsection (4).

23 Penalty: 30 penalty units.

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

25 **259 Monitoring powers of inspectors**

- 26 (1) An inspector who enters premises under subsection 256(1) or  
27 257(1) may exercise the following *monitoring powers*:  
28 (a) the power to search the premises and any thing on the  
29 premises;



- 1 (b) the power to examine or observe any activity conducted on  
2 the premises;
- 3 (c) the power to inspect, examine, take measurements of or  
4 conduct tests on any thing on the premises;
- 5 (d) the power to make any still or moving image or any  
6 recording of the premises or any thing on the premises;
- 7 (e) the power to inspect any document on the premises;
- 8 (f) the power to take extracts from, or make copies of, any such  
9 document;
- 10 (g) the power to take onto the premises such equipment and  
11 materials as the inspector requires for the purpose of  
12 exercising powers in relation to the premises;
- 13 (h) the power to request that a person on the premises  
14 demonstrate the operation of machinery or equipment on the  
15 premises;
- 16 (i) the powers set out in subsections (2), (3), (4) and (6).
- 17 (2) If the premises are a vessel, the **monitoring powers** include the  
18 power to require the master of the vessel to do one or more of the  
19 following:
- 20 (a) stop or manoeuvre the vessel;
- 21 (b) adopt a specified course or speed;
- 22 (c) maintain a specified course or speed.
- 23 (3) The **monitoring powers** include the power to operate or to require  
24 a person to operate electronic equipment on the premises to see  
25 whether:
- 26 (a) the equipment; or
- 27 (b) a disk, tape or other storage device that:
- 28 (i) is on the premises; and
- 29 (ii) can be used with the equipment or is associated with it;
- 30 contains information (**data**) that is relevant to determining:
- 31 (c) whether this Act is being, or has been, complied with; or
- 32 (d) the correctness of information provided under this Act.
- 33 (4) The **monitoring powers** include the following powers in relation to  
34 data found in the exercise of the power under subsection (3):
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- 1 (a) the power to operate or to require a person to operate  
2 electronic equipment on the premises to put the data in  
3 documentary form and remove the documents so produced  
4 from the premises;
- 5 (b) the power to operate or to require a person to operate  
6 electronic equipment on the premises to transfer the data to a  
7 disk, tape or other storage device that:  
8 (i) is brought to the premises for the exercise of the power;  
9 or  
10 (ii) is on the premises, and the use of which for that purpose  
11 has been agreed in writing by the occupier of the  
12 premises;  
13 and to remove the disk, tape or other storage device from the  
14 premises.
- 15 (5) An inspector may operate electronic equipment as mentioned in  
16 subsection (3) or (4) only if he or she believes on reasonable  
17 grounds that the operation of the equipment can be carried out  
18 without damage to the equipment.
- 19 (6) If entry to the premises is under a monitoring warrant, the  
20 *monitoring powers* include the power to secure a thing for a period  
21 not exceeding 24 hours if:  
22 (a) the thing is found during the exercise of monitoring powers  
23 on the premises; and  
24 (b) an inspector believes on reasonable grounds that:  
25 (i) the thing affords evidence of the commission of an  
26 offence against this Act; and  
27 (ii) it is necessary to secure the thing in order to prevent it  
28 from being concealed, lost or destroyed before a warrant  
29 to seize the thing is obtained; and  
30 (iii) it is necessary to secure the thing without an  
31 enforcement warrant because the circumstances are  
32 serious and urgent.
- 33 (7) If an inspector believes on reasonable grounds that the thing needs  
34 to be secured for more than 24 hours, he or she may apply to a  
35 magistrate for an extension of that period.

- 1 (8) The inspector must give notice to the occupier of the premises, or  
2 another person who apparently represents the occupier, of his or  
3 her intention to apply for an extension. The occupier or other  
4 person is entitled to be heard in relation to that application.
- 5 (9) The provisions of this Part relating to the issue of monitoring  
6 warrants apply, with such modifications as are necessary, to the  
7 issue of an extension.
- 8 (10) The 24-hour period may be extended more than once.

9 **260 Enforcement powers of inspectors**

- 10 (1) The following are the *enforcement powers* that an inspector may  
11 exercise in relation to premises under subsection 256(2):
- 12 (a) if entry to the premises is with the occupier's consent—the  
13 power to search the premises and any thing on the premises  
14 for the evidential material the inspector has reasonable  
15 grounds for suspecting may be on the premises;
- 16 (b) if entry to the premises is under an enforcement warrant:
- 17 (i) the power to search the premises and any thing on the  
18 premises for the kind of evidential material specified in  
19 the warrant; and
- 20 (ii) the power to seize evidential material of that kind if the  
21 inspector finds it on the premises;
- 22 (c) the power to inspect, examine, take measurements of,  
23 conduct tests on or take samples of evidential material  
24 referred to in paragraph (a) or (b);
- 25 (d) the power to make any still or moving image or any  
26 recording of the premises or evidential material referred to in  
27 paragraph (a) or (b);
- 28 (e) the power to take onto the premises such equipment and  
29 materials as the inspector requires for the purpose of  
30 exercising powers in relation to the premises;
- 31 (f) the powers set out in subsections (2), (3), (4) and (7).
- 32 (2) If the premises are a vessel, the *enforcement powers* include the  
33 power to require the master of the vessel to do one or more of the  
34 following:
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- 1 (a) stop or manoeuvre the vessel;
- 2 (b) adopt a specified course or speed;
- 3 (c) maintain a specified course or speed.
- 4 (3) The *enforcement powers* include the power to operate electronic
- 5 equipment on the premises to see whether:
- 6 (a) the equipment; or
- 7 (b) a disk, tape or other storage device that:
- 8 (i) is on the premises; and
- 9 (ii) can be used with the equipment or is associated with it;
- 10 contains evidential material referred to in paragraph (1)(a) or (b).
- 11 (4) The *enforcement powers* include the following powers in relation
- 12 to evidential material described in subsection (3) found in the
- 13 exercise of the power under that subsection:
- 14 (a) if entry to the premises is under an enforcement warrant—the
- 15 power to seize the equipment and the disk, tape or other
- 16 storage device referred to in that subsection;
- 17 (b) the power to operate electronic equipment on the premises to
- 18 put the evidential material in documentary form and remove
- 19 the documents so produced from the premises;
- 20 (c) the power to operate electronic equipment on the premises to
- 21 transfer the evidential material to a disk, tape or other storage
- 22 device that:
- 23 (i) is brought to the premises for the exercise of the power;
- 24 or
- 25 (ii) is on the premises and the use of which for that purpose
- 26 has been agreed, in writing, by the occupier of the
- 27 premises;
- 28 and remove the disk, tape or other storage device from the
- 29 premises.
- 30 (5) An inspector may operate electronic equipment as mentioned in
- 31 subsection (3) or (4) only if he or she believes on reasonable
- 32 grounds that the operation of the equipment can be carried out
- 33 without damage to the equipment.
- 34 (6) An inspector may seize equipment or a disk, tape or other storage
- 35 device as mentioned in paragraph (4)(a) only if:
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- 1 (a) it is not practicable to put the evidential material in  
2 documentary form as mentioned in paragraph (4)(b) or to  
3 transfer the evidential material as mentioned in  
4 paragraph (4)(c); or  
5 (b) possession of the equipment or the disk, tape or other storage  
6 device by the occupier could constitute an offence against a  
7 law of the Commonwealth, a State or a Territory.
- 8 (7) If:  
9 (a) entry to the premises is under an enforcement warrant; and  
10 (b) the inspector, in the course of searching for the kind of  
11 evidential material specified in the warrant, finds a thing that  
12 the inspector believes on reasonable grounds to be other  
13 evidential material; and  
14 (c) the inspector believes on reasonable grounds that it is  
15 necessary to seize the thing in order to prevent its  
16 concealment, loss or destruction;  
17 then the *enforcement powers* include seizing the thing.

18 **261 Persons assisting inspectors**

- 19 (1) An inspector may be assisted by other persons in exercising powers  
20 or performing functions or duties under this Part, if that assistance  
21 is necessary and reasonable. A person giving such assistance is a  
22 *person assisting* the inspector.
- 23 (2) A person assisting the inspector:  
24 (a) may enter the premises; and  
25 (b) may exercise powers and perform functions and duties under  
26 this Part; and  
27 (c) must do so in accordance with a direction given by the  
28 inspector to the person assisting.
- 29 (3) A power exercised by a person assisting the inspector as mentioned  
30 in subsection (2) is taken for all purposes to have been exercised by  
31 the inspector.
- 32 (4) A function or duty performed by a person assisting the inspector as  
33 mentioned in subsection (2) is taken for all purposes to have been  
34 performed by the inspector.

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1 **262 Use of force in executing a warrant**

2                   In executing a warrant, an inspector or a person assisting may use  
3                   such force against things as is necessary and reasonable in the  
4                   circumstances.  
5

1 **Division 3—Other powers of inspectors**

2 **263 Power to require persons to answer questions and produce**  
3 **documents**

4 (1) An inspector who is on or in premises that he or she has entered  
5 under a warrant may require anyone on the premises to:

- 6 (a) answer any questions put by the inspector; and  
7 (b) produce any books, records or documents requested by the  
8 inspector.

9 (2) A person contravenes this subsection if:

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

12 (3) Subsection (2) does not apply if the person has a reasonable  
13 excuse.

14 *Fault-based offence*

15 (4) A person commits an offence if the person contravenes  
16 subsection (2).

17 Penalty: 30 penalty units.

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

20 **264 Inspector may give directions**

21 (1) If an inspector believes, on reasonable grounds, that:

22 (a) a person is not complying with this Act in respect of a thing;  
23 and

24 (b) one of the following applies:

25 (i) it is necessary to exercise powers under this section in  
26 order to protect the health and safety of people or to  
27 protect the environment;

28 (ii) it is desirable in the public interest, having regard to the  
29 matters specified in subsection (2), for the inspector to  
30 exercise powers under this section;

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- 1 the inspector may give directions to the person, by written notice,  
2 requiring the person, within the period specified in the notice, to  
3 take such steps in relation to the thing as are reasonable in the  
4 circumstances for the person to comply with this Act.
- 5 (2) For the purposes of deciding under subparagraph (1)(b)(ii) whether  
6 it is desirable to exercise powers under this section to give  
7 directions to a person, the inspector must have regard to the  
8 following:
- 9 (a) whether measures have been, or are being, taken to address  
10 the non-compliance with this Act that the inspector believes  
11 is occurring (the *suspected non-compliance*);
  - 12 (b) the likelihood of the person not complying with this Act at a  
13 future time;
  - 14 (c) the severity of the suspected non-compliance;
  - 15 (d) whether, on one or more occasions, the person:
    - 16 (i) has been charged with or convicted of an offence  
17 against this Act; or
    - 18 (ii) has been given a direction under this section;
  - 19 (e) other means available to the inspector to address the  
20 suspected non-compliance;
  - 21 (f) whether, in the inspector's opinion, the suspected  
22 non-compliance is deliberate;
  - 23 (g) the desirability of deterring future non-compliance with this  
24 Act.
- 25 (3) A person contravenes this subsection if the person does not take  
26 the steps specified in a notice under subsection (1) within the  
27 period specified in the notice.
- 28 *Fault-based offence*
- 29 (4) A person commits an offence if the person contravenes  
30 subsection (3).
- 31 Penalty: 60 penalty units.



1 *Inspector may arrange for steps to be taken*

- 2 (5) If the person does not take the steps specified in the notice within  
3 the period specified in the notice, the inspector may arrange for  
4 those steps to be taken.

5 *Costs*

- 6 (6) If AMSA incurs costs because of arrangements made by the  
7 inspector under subsection (5), the person is liable to pay to AMSA  
8 an amount equal to the costs, and the amount may be recovered by  
9 AMSA as a debt due to AMSA in an eligible court.

10 *Reasonable period*

- 11 (7) A period specified in a notice under subsection (1) must be  
12 reasonable having regard to the circumstances.

13 **265 Inspector may give improvement notices**

- 14 (1) If an inspector believes on reasonable grounds that a person:  
15 (a) is contravening a provision of this Act; or  
16 (b) has contravened a provision of this Act and is likely to  
17 contravene that provision again;  
18 the inspector may give a notice (an *improvement notice*), in  
19 writing, to the person.
- 20 (2) The improvement notice must:  
21 (a) specify the contravention of this Act that the inspector  
22 believes is occurring or is likely to occur; and  
23 (b) set out the reasons for that belief; and  
24 (c) specify a period within which the person is to take the action  
25 necessary to prevent any further contravention, or to prevent  
26 the likely contravention, as the case may be.
- 27 (3) The period specified in the improvement notice must be  
28 reasonable.
- 29 (4) The improvement notice may specify action that the person is to  
30 take during the period specified in the notice.

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- 1 (5) Before the end of the specified period, the inspector may extend  
2 that period in writing.

3 **266 Person must comply with improvement notice**

- 4 (1) A person who is given an improvement notice must ensure that the  
5 notice is complied with to the extent that it relates to any matter  
6 over which the person has control.

7 *Fault-based offence*

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

10 Penalty: 60 penalty units.

11 **267 Inspector may give prohibition notices**

- 12 (1) This section applies if an inspector believes, on reasonable  
13 grounds, that:

14 (a) an activity is occurring in relation to a vessel that involves or  
15 will involve a serious risk to the health or safety of a person;  
16 or

17 (b) an activity may occur in relation to a vessel that, if it occurs,  
18 will involve a serious risk to the health or safety of a person.

- 19 (2) The inspector may give a prohibition notice to the responsible  
20 person in relation to the vessel. For this purpose, the *responsible*  
21 *person* is:

22 (a) the master of the vessel; or

23 (b) if the inspector cannot locate the master—the person who has  
24 immediate control over the vessel.

- 25 (3) The prohibition notice must:

26 (a) specify the activity in respect of which the inspector believes  
27 the risk to health or safety has arisen, and set out the reasons  
28 for that belief; and

29 (b) either:

30 (i) direct the responsible person to ensure that the activity  
31 is not engaged in; or

- 1 (ii) direct the responsible person to ensure that the activity  
2 is not engaged in in a specified manner.
- 3 (4) A specified manner may relate to any one or more of the following:  
4 (a) any vessel, or part of a vessel, in relation to which the  
5 activity is not to be engaged in;  
6 (b) any thing that is not to be used in connection with the  
7 activity;  
8 (c) any procedure that is not to be followed in connection with  
9 the activity.
- 10 (5) If an inspector is satisfied that action taken by the responsible  
11 person to remove the threat to health or safety is not adequate, the  
12 inspector must inform the person accordingly.
- 13 (6) In making a decision under subsection (5), an inspector may  
14 exercise any of the monitoring powers that the inspector considers  
15 necessary for the purposes of making the decision.
- 16 (7) The prohibition notice ceases to have effect when an inspector  
17 notifies the responsible person that the inspector is satisfied that the  
18 responsible person has taken adequate action to remove the risk to  
19 health or safety.
- 20 (8) The prohibition notice may specify action that may be taken to  
21 satisfy an inspector that adequate action has been taken to remove  
22 the risk to health or safety.

23 **268 Person must comply with prohibition notice**

- 24 (1) A person who is given a prohibition notice must ensure that the  
25 notice is complied with to the extent that it relates to any matter  
26 over which the person has control.

27 *Fault-based offence*

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

30 Penalty: 60 penalty units.

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1       **269 Display and distribution of copies of notices**

- 2                   If a person (the *recipient*) is given an improvement notice or a  
3                   prohibition notice in relation to a vessel:  
4                   (a) the recipient must cause a copy of the notice to be displayed  
5                   in a prominent place on or near the vessel; and  
6                   (b) the inspector issuing the notice must give a copy of the notice  
7                   to the master of the vessel.

8       **270 Notices not to be tampered with or removed**

- 9                   (1) A person must not:  
10                   (a) tamper with a notice while it is displayed under section 269;  
11                   or  
12                   (b) remove a notice that has been displayed, before the notice has  
13                   ceased to have effect.  
14                   (2) Subsection (1) does not apply if the person has a reasonable  
15                   excuse.

16                   *Fault-based offence*

- 17                   (3) A person commits an offence if the person contravenes  
18                   subsection (1).

19                   Penalty: 30 penalty units.

20                   Note:       A defendant bears an evidential burden in relation to the matter in  
21                   subsection (2) (see subsection 13.3(3) of the *Criminal Code*).  
22

1 **Division 4—Obligations and incidental powers of**  
2 **inspectors**

3 **271 Consent**

- 4 (1) An inspector must, before obtaining the consent of an occupier of  
5 premises for the purposes of paragraph 256(3)(a), inform the  
6 occupier that the occupier may refuse consent.
- 7 (2) A consent has no effect unless the consent is voluntary.
- 8 (3) A consent may be expressed to be limited to entry during a  
9 particular period. If so, the consent has effect for that period unless  
10 the consent is withdrawn before the end of that period.
- 11 (4) A consent that is not limited as mentioned in subsection (3) has  
12 effect until the consent is withdrawn.
- 13 (5) If an inspector entered premises because of the consent of the  
14 occupier of the premises, the inspector, and any person assisting  
15 the inspector, must leave the premises if the consent ceases to have  
16 effect.

17 **272 Announcement before entry under warrant**

- 18 (1) An inspector must, before entering premises under a warrant:  
19 (a) announce that he or she is authorised to enter the premises;  
20 and  
21 (b) show his or her identity card to the occupier of the premises,  
22 or to another person who apparently represents the occupier,  
23 if the occupier or other person is present at the premises; and  
24 (c) give any person at the premises an opportunity to allow entry  
25 to the premises.
- 26 (2) However, an inspector is not required to comply with  
27 subsection (1) if he or she believes on reasonable grounds that  
28 immediate entry to the premises is required:  
29 (a) to ensure the safety of a person; or  
30 (b) to ensure that the effective execution of the warrant is not  
31 frustrated.

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- 1 (3) If:
- 2 (a) an inspector does not comply with subsection (1) because of
- 3 subsection (2); and
- 4 (b) the occupier of the premises, or another person who
- 5 apparently represents the occupier, is present at the premises;
- 6 the inspector must, as soon as practicable after entering the
- 7 premises, show his or her identity card to the occupier or other
- 8 person.

9 **273 Inspector to be in possession of warrant**

10 If a warrant is being executed in relation to premises, an inspector

11 executing the warrant must be in possession of the warrant or a

12 copy of the warrant.

13 **274 Details of warrant etc. to be given to occupier**

- 14 If:
- 15 (a) a warrant is being executed in relation to premises; and
- 16 (b) the occupier of the premises, or another person who
- 17 apparently represents the occupier, is present at the premises;
- 18 an inspector executing the warrant must, as soon as practicable:
- 19 (c) make a copy of the warrant available to the occupier or other
- 20 person (which need not include the signature of the
- 21 magistrate who issued it); and
- 22 (d) inform the occupier or other person of the rights and
- 23 responsibilities of the occupier or other person under
- 24 Division 5.

25 **275 Completing execution of warrant after temporary cessation**

- 26 (1) This section applies if an inspector, and all persons assisting, who
- 27 are executing a warrant in relation to premises temporarily cease its
- 28 execution and leave the premises.
- 29 (2) The inspector, and persons assisting, may complete the execution
- 30 of the warrant if:
- 31 (a) the warrant is still in force; and

- 1 (b) the inspector and persons assisting are absent from the  
2 premises:  
3 (i) for not more than 1 hour; or  
4 (ii) if there is an emergency—for not more than 12 hours or  
5 such longer period as allowed by a magistrate under  
6 subsection (5); or  
7 (iii) for a longer period if the occupier of the premises  
8 consents in writing.
- 9 (3) An inspector, or person assisting, may apply to a magistrate for an  
10 extension of the 12-hour period mentioned in  
11 subparagraph (2)(b)(ii) if:  
12 (a) there is an emergency; and  
13 (b) the inspector or person assisting believes on reasonable  
14 grounds that the inspector and the persons assisting will not  
15 be able to return to the premises within that period.
- 16 (4) If it is practicable to do so, before making the application, the  
17 inspector or person assisting must give notice to the occupier of the  
18 premises of his or her intention to apply for an extension.
- 19 (5) A magistrate may extend the period during which the inspector and  
20 persons assisting may be away from the premises if:  
21 (a) an application is made under subsection (3); and  
22 (b) the magistrate is satisfied, by information on oath or  
23 affirmation, that there are exceptional circumstances that  
24 justify the extension; and  
25 (c) the extension would not result in the period ending after the  
26 warrant ceases to be in force.

27 **276 Completing execution of warrant stopped by court order**

- 28 An inspector, and any persons assisting, may complete the  
29 execution of a warrant that has been stopped by an order of a court  
30 if:  
31 (a) the order is later revoked or reversed on appeal; and  
32 (b) the warrant is still in force when the order is revoked or  
33 reversed.

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1       **277 Expert assistance to operate electronic equipment**

2               (1) This section applies to premises to which a warrant relates.

3               (2) If an inspector believes on reasonable grounds that:

4                     (a) there is on the premises information (*data*) relevant to  
5                               determining:

6                               (i) whether this Act is being, or has been, complied with; or

7                               (ii) the correctness of information provided under this Act;

8                                       or

9                               (iii) whether there is evidential material on the premises; and

10               (b) the data may be accessible by operating electronic equipment  
11                     on the premises; and

12               (c) expert assistance is required to operate the equipment; and

13               (d) if he or she does not take action under this subsection, the  
14                     data may be destroyed, altered or otherwise interfered with;

15               he or she may do whatever is necessary to secure the equipment,  
16                     whether by locking it up, placing a guard or other means.

17               (3) The inspector must give notice to the occupier of the premises, or  
18                     another person who apparently represents the occupier, of his or  
19                     her intention to secure the equipment and of the fact that the  
20                     equipment may be secured for up to 24 hours.

21               (4) The equipment may be secured:

22                     (a) until the 24-hour period ends; or

23                     (b) until the equipment has been operated by the expert;

24                     whichever happens first.

25               (5) If an inspector believes on reasonable grounds that the equipment  
26                     needs to be secured for more than 24 hours, he or she may apply to  
27                     a magistrate for an extension of that period.

28               (6) The inspector must give notice to the occupier of the premises, or  
29                     another person who apparently represents the occupier, of his or  
30                     her intention to apply for an extension. The occupier or other  
31                     person is entitled to be heard in relation to that application.



1 (7) The provisions of this Part relating to the issue of warrants apply,  
2 with such modifications as are necessary, to the grant of an  
3 extension.

4 (8) The 24-hour period may be extended more than once.

## 5 **278 Compensation for damage to electronic equipment**

6 (1) This section applies if:

- 7 (a) as a result of electronic equipment being operated as  
8 mentioned in this Part:
- 9 (i) damage is caused to the equipment; or
  - 10 (ii) the data recorded on the equipment is damaged; or
  - 11 (iii) programs associated with the use of the equipment, or  
12 with the use of the data, are damaged or corrupted; and
- 13 (b) the damage or corruption occurs because:
- 14 (i) insufficient care was exercised in selecting the person  
15 who was to operate the equipment; or
  - 16 (ii) insufficient care was exercised by the person operating  
17 the equipment.

18 (2) AMSA must pay the owner of the equipment, or the user of the  
19 data or programs, such reasonable compensation for the damage or  
20 corruption as AMSA and the owner or user agree on.

21 (3) However, if the owner or user and AMSA fail to agree, the owner  
22 or user may institute proceedings in an eligible court for such  
23 reasonable amount of compensation as the eligible court  
24 determines.

25 (4) In determining the amount of compensation payable, regard is to  
26 be had to whether the occupier of the premises, or the occupier's  
27 employees or agents, if they were available at the time, provided  
28 any appropriate warning or guidance on the operation of the  
29 equipment.

30 (5) In this section:

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

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1 **Division 5—Occupier's rights and responsibilities**

2 **279 Occupier entitled to observe execution of warrant**

- 3 (1) If:
- 4 (a) a warrant is being executed in relation to premises; and
- 5 (b) the occupier of the premises, or another person who
- 6 apparently represents the occupier, is present at the premises;
- 7 the occupier or other person is entitled to observe the execution of
- 8 the warrant.
- 9 (2) The right to observe the execution of the warrant ceases if the
- 10 occupier or other person impedes that execution.
- 11 (3) This section does not prevent the execution of the warrant in 2 or
- 12 more areas of the premises at the same time.

13 **280 Occupier to provide inspector with facilities and assistance**

- 14 (1) The occupier of premises to which a warrant relates, or another
- 15 person who apparently represents the occupier, must provide:
- 16 (a) an inspector executing the warrant; and
- 17 (b) any person assisting the inspector;
- 18 with all reasonable facilities and assistance for the effective
- 19 exercise of their powers.
- 20 (2) A person contravenes this subsection if:
- 21 (a) the person is subject to subsection (1); and
- 22 (b) the person fails to comply with that subsection.

23 *Fault-based offence*

- 24 (3) A person commits an offence if the person contravenes
- 25 subsection (2).

26 Penalty: 30 penalty units.

27

1     **Division 6—General provisions relating to seizure**

2     **281 Copies of seized things to be provided**

- 3             (1) This section applies if:
- 4                 (a) an enforcement warrant is being executed in relation to
- 5                 premises; and
- 6                 (b) an inspector seizes one or more of the following from the
- 7                 premises under this Part:
- 8                     (i) a document, film, computer file or other thing that can
- 9                     be readily copied;
- 10                    (ii) a storage device, the information in which can be
- 11                    readily copied.
- 12             (2) The occupier of the premises, or another person who apparently
- 13             represents the occupier and who is present when the warrant is
- 14             executed, may request the inspector to give a copy of the thing or
- 15             the information to the occupier or other person.
- 16             (3) The inspector must comply with the request as soon as practicable
- 17             after the seizure.
- 18             (4) However, the inspector is not required to comply with the request
- 19             if possession of the document, film, computer file, thing or
- 20             information by the occupier or other person could constitute an
- 21             offence against a law of the Commonwealth, a State or a Territory.

22     **282 Receipts for seized things**

- 23             (1) If a thing is seized under this Part, an inspector must provide a
- 24             receipt for the thing.
- 25             (2) If 2 or more things are seized, they may be covered in the one
- 26             receipt.

27     **283 Return of seized things**

- 28             (1) An inspector must take reasonable steps to return a thing seized
- 29             under this Part when the earliest of the following happens:
- 30                 (a) the reason for the thing's seizure no longer exists;

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- 1 (b) it is decided that the thing is not to be used in evidence;  
2 (c) the period of 60 days after the thing's seizure ends.

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

4 *Exceptions*

- 5 (2) Subsection (1):  
6 (a) is subject to any contrary order of a court; and  
7 (b) does not apply if the thing:  
8 (i) is forfeited or forfeitable to the Commonwealth; or  
9 (ii) is the subject of a dispute as to ownership.
- 10 (3) The inspector is not required to take reasonable steps to return a  
11 thing because of paragraph (1)(c) if:  
12 (a) proceedings in respect of which the thing may afford  
13 evidence were instituted before the end of the 60 days and  
14 have not been completed (including an appeal to a court in  
15 relation to those proceedings); or  
16 (b) the thing may continue to be retained because of an order  
17 under section 284; or  
18 (c) the Commonwealth, AMSA or an inspector is otherwise  
19 authorised (by a law, or an order of a court, of the  
20 Commonwealth or of a State or Territory) to retain, destroy,  
21 dispose of or otherwise deal with the thing.

22 *Return of thing*

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

26 **284 Magistrate may permit a thing to be retained**

- 27 (1) An inspector may:  
28 (a) before the end of 60 days after a seizure of a thing under this  
29 Part; or  
30 (b) before the end of a period previously specified in an order of  
31 a magistrate under this section;

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- 1                   apply to a magistrate for an order permitting the retention of the  
2                   thing for a further period, unless proceedings in respect of which  
3                   the thing may afford evidence have commenced.
- 4                   (2) If the magistrate is satisfied that it is necessary for the thing to  
5                   continue to be retained:
- 6                   (a) for the purposes of an investigation in respect of an offence  
7                   against this Act or a contravention of a civil penalty  
8                   provision; or  
9                   (b) to enable evidence of such an offence or contravention to be  
10                  secured for the purposes of a prosecution or proceedings for a  
11                  civil penalty order;
- 12                  the magistrate may order that the thing may continue to be retained  
13                  for a period specified in the order (which must not exceed 3 years).
- 14                  (3) Before making the application, the inspector must:
- 15                  (a) take reasonable steps to discover who has an interest in the  
16                  retention of the thing; and  
17                  (b) if it is practicable to do so, notify each person whom the  
18                  inspector believes to have such an interest of the proposed  
19                  application.

20                  **285 Disposal of things**

- 21                  (1) AMSA may dispose of a thing seized under this Part if:
- 22                  (a) an inspector has under section 283 taken reasonable steps to  
23                  return the thing to a person; and  
24                  (b) either:
- 25                          (i) the inspector has been unable to locate the person,  
26                          despite making reasonable efforts; or  
27                          (ii) the person has refused to take possession of the thing.
- 28                  (2) AMSA may dispose of the thing in such manner as AMSA thinks  
29                  appropriate.  
30

1       **Division 7—Warrants**

2       **286 Monitoring warrants**

- 3               (1) An inspector may apply to a magistrate for a warrant under this  
4               section in relation to premises.
- 5               (2) The magistrate may issue the warrant if the magistrate is satisfied,  
6               by information on oath or affirmation, that it is reasonably  
7               necessary that one or more inspectors should have access to the  
8               premises for the purpose of determining:  
9               (a) whether this Act is being, or has been, complied with; or  
10              (b) the correctness of information provided under this Act.
- 11              (3) However, the magistrate must not issue the warrant unless the  
12              inspector or some other person has given to the magistrate, either  
13              orally or by affidavit, such further information (if any) as the  
14              magistrate requires concerning the grounds on which the issue of  
15              the warrant is being sought.
- 16              (4) The warrant must:  
17              (a) describe the premises to which the warrant relates; and  
18              (b) state that the warrant is issued under this section; and  
19              (c) state the purpose for which the warrant is issued; and  
20              (d) authorise one or more inspectors (whether or not named in  
21              the warrant) from time to time while the warrant remains in  
22              force:  
23              (i) to enter the premises; and  
24              (ii) to exercise the powers set out in Divisions 2, 3 and 4 in  
25              relation to the premises; and  
26              (e) state whether entry is authorised to be made at any time of  
27              the day or during specified hours of the day; and  
28              (f) specify the day (not more than 6 months after the issue of the  
29              warrant) on which the warrant ceases to be in force.

30       **287 Enforcement warrants**

- 31              (1) An inspector may apply to a magistrate for a warrant under this  
32              section in relation to premises.

- 1 (2) The magistrate may issue the warrant if the magistrate is satisfied,  
2 by information on oath or affirmation, that there are reasonable  
3 grounds for suspecting that there is, or there may be within the next  
4 72 hours, evidential material on the premises.
- 5 (3) However, the magistrate must not issue the warrant unless the  
6 inspector or some other person has given to the magistrate, either  
7 orally or by affidavit, such further information (if any) as the  
8 magistrate requires concerning the grounds on which the issue of  
9 the warrant is being sought.
- 10 (4) The warrant must:
- 11 (a) describe the premises to which the warrant relates; and  
12 (b) state that the warrant is issued under this section; and  
13 (c) specify the offence or contravention to which the warrant  
14 relates; and  
15 (d) specify the kind of evidential material that is to be searched  
16 for under the warrant; and  
17 (e) name one or more inspectors; and  
18 (f) authorise the inspector or inspectors so named:  
19 (i) to enter the premises; and  
20 (ii) to exercise the powers set out in Divisions 2, 3, 4 and 6  
21 in relation to the premises; and  
22 (g) state whether the entry is authorised to be made at any time  
23 of the day or during specified hours of the day; and  
24 (h) specify the day (not more than 1 week after the issue of the  
25 warrant) on which the warrant ceases to be in force.

26 **288 Enforcement warrants by telephone, fax etc.**

- 27 (1) An inspector may apply to a magistrate by telephone, fax or other  
28 electronic means for a warrant under section 287 in relation to  
29 premises:
- 30 (a) in an urgent case; or  
31 (b) if the inspector believes, on reasonable grounds, that the  
32 delay that would occur if an application were made in person  
33 would frustrate the effective execution of the warrant.

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- 1                   (2) The magistrate may require communication by voice to the extent  
2                   that it is practicable in the circumstances.
- 3                   (3) An application under this section must include all information of  
4                   the kind mentioned in subsection 287(2) in relation to the premises  
5                   that sets out the grounds on which the warrant is sought. If it is  
6                   necessary to do so, the inspector may apply for the warrant before  
7                   the information is sworn or affirmed.
- 8                   (4) If the magistrate is satisfied:  
9                   (a) after considering the terms of the information; and  
10                  (b) after receiving such further information (if any) as the  
11                  magistrate requires concerning the grounds on which the  
12                  issue of the warrant is being sought;  
13                  that there are reasonable grounds for issuing the warrant, the  
14                  magistrate may complete and sign the same warrant that the  
15                  magistrate would issue under section 287 if the application had  
16                  been made under that section.
- 17                  (5) If the magistrate completes and signs the warrant, the magistrate  
18                  must inform the inspector, by telephone, fax or other electronic  
19                  means, of:  
20                  (a) the terms of the warrant; and  
21                  (b) the day on which, and the time at which, the warrant was  
22                  signed.
- 23                  (6) The inspector must then complete a form of warrant in the same  
24                  terms as the warrant completed and signed by the magistrate,  
25                  stating on the form:  
26                  (a) the name of the magistrate; and  
27                  (b) the day on which, and the time at which, the warrant was  
28                  signed.
- 29                  (7) The inspector must also, not later than the day after the day on  
30                  which the warrant ceased to be in force or the day of execution of  
31                  the warrant, whichever is earlier, send to the magistrate:  
32                  (a) the form of warrant completed by the inspector; and  
33                  (b) the information referred to in subsection (3), which must  
34                  have been duly sworn or affirmed.



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- 1 (8) The magistrate must attach to the documents provided under  
2 subsection (7) the warrant signed by the magistrate.
- 3 (9) A form of warrant duly completed under subsection (6) is authority  
4 for the same powers as are authorised by the warrant signed by the  
5 magistrate.
- 6 (10) If:
- 7 (a) it is material, in any proceedings, for a court to be satisfied  
8 that an exercise of a power was authorised by this section;  
9 and
- 10 (b) the warrant signed by the magistrate authorising the exercise  
11 of the power is not produced in evidence;  
12 the court must assume, unless the contrary is proved, that the  
13 exercise of the power was not authorised by such a warrant.

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

- 14
- 15 (1) An inspector contravenes this subsection if:
- 16 (a) the inspector states in a document that purports to be a form  
17 of warrant under section 288 the name of a magistrate, unless  
18 that magistrate signed the warrant; or
- 19 (b) the inspector states on a form of warrant under that section a  
20 matter that, to the inspector's knowledge, departs in a  
21 material particular from the terms of the warrant signed by  
22 the magistrate under that section; or
- 23 (c) the inspector purports to execute, or present to another  
24 person, a document that purports to be a form of warrant  
25 under that section that the inspector knows:
- 26 (i) has not been approved by a magistrate under that  
27 section; or
- 28 (ii) departs in a material particular from the terms of a  
29 warrant signed by a magistrate under that section; or
- 30 (d) the inspector gives to a magistrate a form of warrant under  
31 that section that is not the form of warrant that the inspector  
32 purported to execute.

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**Part 4** Inspectors

**Division 7** Warrants

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1

*Fault-based offence*

2

(2) A person commits an offence if the person contravenes

3

subsection (1).

4

Penalty: Imprisonment for 2 years.

5

1 **Division 8—Powers of magistrates**

2 **290 Powers of magistrates**

- 3 (1) A power conferred on a magistrate by this Part is conferred on the  
4 magistrate:
- 5 (a) in a personal capacity; and  
6 (b) not as a court or a member of a court.
- 7 (2) The magistrate need not accept the power conferred.
- 8 (3) A magistrate exercising a power conferred by this Part has the  
9 same protection and immunity as if he or she were exercising the  
10 power:
- 11 (a) as the court of which the magistrate is a member; or  
12 (b) as a member of the court of which the magistrate is a  
13 member.  
14

1 **Part 5—Civil penalty supporting provisions**

2 **Division 1—Obtaining a civil penalty order**

3 **291 Civil penalty orders**

4 *Application for order*

- 5 (1) AMSA may apply to an eligible court for an order that a person  
6 who is alleged to have contravened a civil penalty provision pay a  
7 pecuniary penalty.
- 8 (2) AMSA must make the application within 6 years of the alleged  
9 contravention.

10 *Eligible court may order person to pay pecuniary penalty*

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

15 Note: Subsection (5) sets out the maximum penalty that the eligible court  
16 may order the person to pay.

- 17 (4) An order under subsection (3) is a ***civil penalty order***.

18 *Determining pecuniary penalty*

- 19 (5) The pecuniary penalty must not be more than:  
20 (a) if the person is a body corporate—5 times the civil penalty  
21 specified for the contravention; and  
22 (b) otherwise—the civil penalty specified for the contravention.
- 23 (6) In determining the pecuniary penalty, the eligible court may take  
24 into account all relevant matters, including:  
25 (a) the nature and extent of the contravention; and  
26 (b) the nature and extent of any loss or damage suffered because  
27 of the contravention; and  
28 (c) the circumstances in which the contravention took place; and

- 1 (d) whether the person has previously been found by a court in  
2 proceedings under one or more of the following to have  
3 engaged in any similar conduct:  
4 (i) this Act;  
5 (ii) the Marine Safety (Domestic Commercial Vessel)  
6 National Law;  
7 (iii) the *Crimes Act 1914* or the *Criminal Code* in relation to  
8 this Act.

9 **292 Civil enforcement of penalty**

- 10 (1) A pecuniary penalty is a debt payable to AMSA on behalf of the  
11 Commonwealth.  
12 (2) AMSA may enforce a civil penalty order as if it were an order  
13 made in civil proceedings against the person to recover a debt due  
14 by the person. The debt arising from the order is taken to be a  
15 judgement debt.

16 **293 Conduct contravening more than one civil penalty provision**

- 17 (1) If conduct constitutes a contravention of 2 or more civil penalty  
18 provisions, proceedings may be instituted under this Part against a  
19 person in relation to the contravention of any one or more of those  
20 provisions.  
21 (2) However, the person is not liable to more than one pecuniary  
22 penalty under this Part in relation to the same conduct.

23 **294 Multiple contraventions**

- 24 (1) An eligible court may make a single civil penalty order against a  
25 person for multiple contraventions of a civil penalty provision if  
26 proceedings for the contraventions are founded on the same facts,  
27 or if the contraventions form, or are part of, a series of  
28 contraventions of the same or a similar character.  
29 (2) However, the penalty must not exceed the sum of the maximum  
30 penalties that could be ordered if a separate penalty were ordered  
31 for each of the contraventions.

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1     **295 Proceedings may be heard together**

2                     An eligible court may direct that 2 or more proceedings for civil  
3                     penalty orders are to be heard together.

4     **296 Civil evidence and procedure rules for civil penalty orders**

5                     An eligible court must apply the rules of evidence and procedure  
6                     for civil matters when hearing proceedings for a civil penalty  
7                     order.

8

1 **Division 2—Civil proceedings and criminal proceedings**

2 **297 Civil proceedings after criminal proceedings**

3 An eligible court may not make a civil penalty order against a  
4 person for a contravention of a civil penalty provision if the person  
5 has been convicted of an offence constituted by conduct that is the  
6 same, or substantially the same, as the conduct constituting the  
7 contravention.

8 **298 Criminal proceedings during civil proceedings**

- 9 (1) Proceedings for a civil penalty order against a person for a  
10 contravention of a civil penalty provision are stayed if:  
11 (a) criminal proceedings are commenced or have already been  
12 commenced against the person for an offence; and  
13 (b) the offence is constituted by conduct that is the same, or  
14 substantially the same, as the conduct alleged to constitute  
15 the contravention.
- 16 (2) The proceedings for the order may be resumed if the person is not  
17 convicted of the offence. Otherwise, the proceedings are dismissed.

18 **299 Criminal proceedings after civil proceedings**

19 Criminal proceedings may be commenced against a person for  
20 conduct that is the same, or substantially the same, as conduct that  
21 would constitute a contravention of a civil penalty provision  
22 regardless of whether a civil penalty order has been made against  
23 the person in relation to the contravention.

24 **300 Evidence given in civil proceedings not admissible in criminal  
25 proceedings**

- 26 (1) Evidence of information given, or evidence of production of  
27 documents, by an individual is not admissible in criminal  
28 proceedings against the individual if:  
29 (a) the individual previously gave the evidence or produced the  
30 documents in proceedings for a civil penalty order against the

**Chapter 8** Enforcement

**Part 5** Civil penalty supporting provisions

**Division 2** Civil proceedings and criminal proceedings

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- 1 individual for an alleged contravention of a civil penalty  
2 provision (whether or not the order was made); and  
3 (b) the conduct alleged to constitute the offence is the same, or  
4 substantially the same, as the conduct alleged to constitute  
5 the contravention.
- 6 (2) However, subsection (1) does not apply to criminal proceedings in  
7 relation to the falsity of the evidence given by the individual in the  
8 proceedings for the civil penalty order.  
9



1 **Division 3—Miscellaneous**

2 **301 Ancillary contravention of civil penalty provisions**

3 (1) A person must not:

4 (a) attempt to contravene a civil penalty provision; or

5 (b) aid, abet, counsel or procure a contravention of a civil  
6 penalty provision; or

7 (c) induce (by threats, promises or otherwise) a contravention of  
8 a civil penalty provision; or

9 (d) be in any way, directly or indirectly, knowingly concerned in,  
10 or party to, a contravention of a civil penalty provision; or

11 (e) conspire with others to effect a contravention of a civil  
12 penalty provision.

13 Note: Section 303 (which provides that a person's state of mind does not  
14 need to be proved in relation to a civil penalty provision) does not  
15 apply to this subsection.

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

18 **302 Mistake of fact**

19 (1) A person is not liable to have a civil penalty order made against the  
20 person for a contravention of a civil penalty provision if:

21 (a) at or before the time of the conduct constituting the  
22 contravention, the person:

23 (i) considered whether or not facts existed; and

24 (ii) was under a mistaken but reasonable belief about those  
25 facts; and

26 (b) had those facts existed, the conduct would not have  
27 constituted a contravention of the civil penalty provision.

28 (2) For the purposes of subsection (1), a person may be regarded as  
29 having considered whether or not facts existed if:

30 (a) the person had considered, on a previous occasion, whether  
31 those facts existed in the circumstances surrounding that  
32 occasion; and

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- 1 (b) the person honestly and reasonably believed that the  
2 circumstances surrounding the present occasion were the  
3 same, or substantially the same, as those surrounding the  
4 previous occasion.
- 5 (3) A person who wishes to rely on a matter in subsection (1) or (2) in  
6 proceedings for a civil penalty order bears an evidential burden in  
7 relation to that matter.

8 **303 State of mind**

- 9 (1) In proceedings for a civil penalty order against a person for a  
10 contravention of a civil penalty provision (other than because of  
11 subsection 301(1)), it is not necessary to prove:  
12 (a) the person's intention; or  
13 (b) the person's knowledge; or  
14 (c) the person's recklessness; or  
15 (d) the person's negligence; or  
16 (e) any other state of mind of the person;  
17 other than as expressly provided.
- 18 (2) An expression used in a civil penalty provision that expressly  
19 provides for a state of mind has the same meaning as in the  
20 *Criminal Code*.
- 21 (3) Subsection (1) does not affect the operation of section 302 (mistake  
22 of fact).

23 **304 Civil penalty provisions contravened by employees, agents or**  
24 **officers**

25 If an element of a civil penalty provision is done or omitted to be  
26 done by an employee, agent or officer of a body corporate acting  
27 within the actual or apparent scope of his or her employment, or  
28 within his or her actual or apparent authority, the element must also  
29 be attributed to the body corporate.  
30

1 **Part 6—Infringement notices and voluntary**  
2 **enforceable undertakings**  
3

4 **305 Regulations—infringement notices**

- 5 (1) The regulations may provide for a person who is alleged to have  
6 contravened a civil penalty provision to pay a penalty as an  
7 alternative to civil proceedings.
- 8 (2) The penalty must not exceed one-fifth of the maximum penalty that  
9 a court could impose on the person for contravention of that  
10 provision.

11 **306 Acceptance of undertakings**

- 12 (1) AMSA may accept any of the following undertakings:  
13 (a) a written undertaking given by a person that the person will,  
14 in order to comply with an offence provision or a civil  
15 penalty provision of this Act, take specified action;  
16 (b) a written undertaking given by a person that the person will,  
17 in order to comply with an offence provision or a civil  
18 penalty provision of this Act, refrain from taking specified  
19 action;  
20 (c) a written undertaking given by a person that the person will  
21 take specified action directed towards ensuring that the  
22 person does not contravene an offence provision or a civil  
23 penalty provision of this Act, or is unlikely to contravene  
24 such a provision, in the future.
- 25 (2) The undertaking must be expressed to be an undertaking under this  
26 section.
- 27 (3) The person may withdraw or vary the undertaking at any time, but  
28 only with the written consent of AMSA.
- 29 (4) An acceptance given by AMSA is not a legislative instrument.
- 30 (5) AMSA may, by written notice given to the person, cancel the  
31 undertaking.

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1 (6) AMSA may publish a copy of the undertaking on its website.

2 **307 Enforcement of undertakings**

3 (1) AMSA may apply to an eligible court for an order under  
4 subsection (2) if:

- 5 (a) a person has given an undertaking; and  
6 (b) the undertaking has been accepted under section 306 and has  
7 not been withdrawn or cancelled; and  
8 (c) AMSA considers that the person has breached the  
9 undertaking.

10 (2) If the eligible court is satisfied that the person has breached the  
11 undertaking, the eligible court may make any or all of the  
12 following orders:

- 13 (a) an order directing the person to comply with the undertaking;  
14 (b) an order directing the person to pay to AMSA an amount up  
15 to the amount of any financial benefit that the person has  
16 obtained directly or indirectly and that is reasonably  
17 attributable to the breach;  
18 (c) any order that the eligible court considers appropriate  
19 directing the person to compensate any other person who has  
20 suffered loss or damage as a result of the breach;  
21 (d) any other order that the eligible court considers appropriate.  
22

1 **Chapter 9—Other matters**

2 **Part 1—Preliminary**  
3

4 **308 Simplified outline of this Chapter**

- 5 (1) This Chapter is a collection of various matters that relate to the  
6 other provisions of the Act.
- 7 (2) Part 2 deals with the official logbook for a vessel.
- 8 (3) Part 3 provides for administrative review of decisions.
- 9 (4) Part 4 contains general provisions relating to certificates.
- 10 (5) Part 5 provides for miscellaneous matters, including the following:  
11 (a) offences relating to AMSA (Division 1);  
12 (b) provisions relating to various legal matters (Division 2);  
13 (c) alternative constitutional bases (Division 3);  
14 (d) exemptions (Division 4);  
15 (e) various other matters (Division 5).
- 16 (6) Part 6 relates to regulations and other legislative instruments.  
17

1 **Part 2—The official logbook for a vessel**  
2

3 **309 Keeping official logbook**

- 4 (1) The master of a regulated Australian vessel must keep an official  
5 logbook for the vessel in accordance with the regulations.
- 6 (2) The regulations may make provision in relation to the keeping of  
7 logbooks, including but not limited to the following:  
8 (a) prescribing the entries that are to be made in a logbook and  
9 the circumstances in which those entries are to be made;  
10 (b) prescribing the period within which entries are to be made in  
11 the logbook;  
12 (c) requiring entries in the logbook to be signed.

13 *Fault-based offence*

- 14 (3) A person commits an offence if the person contravenes  
15 subsection (1).

16 Penalty: 30 penalty units.

17 *Civil penalty*

- 18 (4) A person is liable to a civil penalty if the person contravenes  
19 subsection (1).

20 Civil penalty: 300 penalty units.

21 **310 Offences relating to content of official logbook**

- 22 (1) A person must not:  
23 (a) destroy or mutilate a vessel's official logbook or an entry in  
24 such a logbook; or  
25 (b) render such an entry illegible; or  
26 (c) make or sign an entry in a vessel's official logbook, knowing  
27 that the entry is false or fraudulent; or

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1 (d) omit to make an entry in a vessel's official logbook, knowing  
2 that the omission will result in the logbook being false or  
3 fraudulent.

4 *Fault-based offence*

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

7 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

8 *Civil penalty*

9 (3) A person is liable to a civil penalty if the person contravenes  
10 subsection (1).

11 Civil penalty: 600 penalty units.

12 **311 Retention of official logbook after removal from vessel**

13 (1) The person who is the owner of a vessel when the vessel's official  
14 logbook is removed from the vessel must keep the logbook for a  
15 period of 5 years beginning when the logbook is removed.

16 *Fault-based offence*

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

19 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

20 *Civil penalty*

21 (3) A person is liable to a civil penalty if the person contravenes  
22 subsection (1).

23 Civil penalty: 600 penalty units.

24 **312 Births, deaths etc.**

25 (1) The master of a regulated Australian vessel contravenes this  
26 subsection if:

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- 1 (a) either:  
2 (i) a person carried on the vessel gives birth to a child, dies  
3 or disappears; or  
4 (ii) a seafarer is injured or contracts an illness that  
5 incapacitates him or her from the performance of his or  
6 her duty; and  
7 (b) the master fails to do both of the following:  
8 (i) record the occurrence in the vessel's official logbook  
9 together with such particulars with respect to the  
10 occurrence as are prescribed by the regulations;  
11 (ii) as soon as practicable, give a report in writing in the  
12 approved form of the occurrence to a person prescribed  
13 by the regulations.

14 *Fault-based offence*

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

17 Penalty: 60 penalty units.

18 *Civil penalty*

- 19 (3) A person is liable to a civil penalty if the person contravenes  
20 subsection (1).

21 Civil penalty: 180 penalty units.  
22



1 **Part 3—Administrative review**  
2

3 **313 Review of decisions**

- 4 (1) Applications may be made to the Administrative Appeals Tribunal  
5 for review of the following decisions of an issuing body:
- 6 (a) a decision under section 17 to refuse to make a declaration in  
7 relation to a vessel;
  - 8 (b) a decision under section 19 to refuse to make a declaration in  
9 relation to a vessel;
  - 10 (c) a decision under section 25 to refuse to make a declaration in  
11 relation to a vessel;
  - 12 (d) a decision under section 31 to refuse to issue a seafarer  
13 certificate;
  - 14 (e) a decision under section 31 to impose a condition on a  
15 seafarer certificate;
  - 16 (f) a decision under section 32 to vary, or refuse to vary, a  
17 seafarer certificate;
  - 18 (g) a decision under section 33 to revoke a seafarer certificate;
  - 19 (h) a decision under section 44 to refuse to issue a maritime  
20 labour certificate;
  - 21 (i) a decision under section 44 to impose a condition on a  
22 maritime labour certificate;
  - 23 (j) a decision under section 45 to vary, or refuse to vary, a  
24 maritime labour certificate;
  - 25 (k) a decision under section 46 to revoke a maritime labour  
26 certificate;
  - 27 (l) a decision under section 51 to determine the seafarers to be  
28 carried by a vessel;
  - 29 (m) a decision under section 100 to refuse to issue a safety  
30 certificate;
  - 31 (n) a decision under section 100 to impose a condition on a  
32 safety certificate;
  - 33 (o) a decision under section 101 to vary, or refuse to vary, a  
34 safety certificate;
  - 35 (p) a decision under section 102 to revoke a safety certificate;
-

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- 1 (q) a decision under section 132 to refuse to issue a pollution  
2 certificate;
- 3 (r) a decision under section 132 to impose a condition on a  
4 pollution certificate;
- 5 (s) a decision under section 133 to vary, or to refuse to vary, a  
6 pollution certificate;
- 7 (t) a decision under section 134 to revoke a pollution certificate;
- 8 (u) a decision under section 147 to give a direction;
- 9 (v) a decision under section 155 to refuse to issue a tonnage  
10 certificate;
- 11 (w) a decision under section 155 to impose a condition on a  
12 tonnage certificate;
- 13 (x) a decision under section 156 to vary, or to refuse to vary, a  
14 tonnage certificate;
- 15 (y) a decision under section 157 to revoke a tonnage certificate;
- 16 (z) a decision under section 172 to refuse to grant an exemption;
- 17 (za) a decision under section 172 to impose a condition on an  
18 exemption;
- 19 (zb) a decision under section 191 to give a notice;
- 20 (zc) a decision under section 246 to give a direction;
- 21 (zd) a decision under section 248 to detain a vessel;
- 22 (ze) a decision under section 250 to release a detained vessel  
23 subject to a condition;
- 24 (zf) a decision under section 306 not to accept, or to cancel, an  
25 undertaking;
- 26 (zg) a decision under section 334 not to exempt a vessel or a class  
27 of vessel.
- 28 (2) Applications may be made to the Administrative Appeals Tribunal  
29 for review of the following decisions of an officer of Customs:
- 30 (a) a decision under section 249 to released a detained vessel;
- 31 (b) a decision under section 251 to detain a vessel.
- 32 (3) Applications may be made to the Administrative Appeals Tribunal  
33 for review of a decision of the Minister under section 332 not to  
34 exempt a vessel.  
35

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## 1 **Part 4—General provisions relating to certificates**

2

### 3 **314 Regulations may provide for particular matters relating to** 4 **certificates**

- 5 (1) The regulations may prescribe the following matters in relation to  
6 applying for certificates:
- 7 (a) the persons who may make applications;
  - 8 (b) forms for the making of applications;
  - 9 (c) the manner of making applications;
  - 10 (d) information required to be included in applications;
  - 11 (e) documents that must accompany applications.
- 12 (2) The regulations may require information included in applications  
13 to be verified by statutory declaration.
- 14 (3) The regulations may prescribe the following in relation to  
15 certificates:
- 16 (a) criteria that must be satisfied in order for issuing bodies to  
17 issue, vary, or revoke certificates;
  - 18 (b) the time limits within which applications for certificates are  
19 to be determined;
  - 20 (c) the information to be included in certificates;
  - 21 (d) the person in whose name a certificate is to be issued;
  - 22 (e) conditions to which certificates are subject;
  - 23 (f) conditions that may be imposed upon certificates by issuing  
24 bodies;
  - 25 (g) the time certificates, variations of certificates and revocations  
26 of certificates come into force;
  - 27 (h) the time certificates cease to be in force;
  - 28 (i) the methods of replacing certificates.
- 29 (4) The criteria that may be prescribed for the purposes of  
30 paragraph (3)(a) and the conditions that may be prescribed for the  
31 purposes of paragraphs (3)(e) and (f) include criteria or conditions  
32 relating to compliance with specified standards.
- 33 (5) The regulations may make provision in relation to the following:

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- 1 (a) the renewal of certificates;  
2 (b) the suspension of certificates;  
3 (c) the transfer of certificates;  
4 (d) the surrender of certificates;  
5 (e) reports and declarations of issuing bodies, inspectors or other  
6 persons.

7 **315 AMSA may require delivery of revoked certificates**

- 8 (1) If a certificate issued in respect of a regulated Australian vessel is  
9 revoked, AMSA may:  
10 (a) require the certificate to be delivered to AMSA or to such  
11 other person as AMSA specifies; and  
12 (b) detain the vessel under subsection 247(1) until the  
13 requirement is complied with.  
14 (2) A requirement in relation to a vessel is to be given by notice in  
15 writing addressed to the owner, agent or master of the vessel.

16 **316 Issue, variation and revocation of certificates by issuing bodies**  
17 **other than AMSA**

- 18 (1) An issuing body that issues, varies or revokes a certificate under  
19 this Act does so on behalf of AMSA.  
20 (2) An issuing body other than AMSA must not vary or revoke a  
21 certificate under this Act unless the issuing body originally issued  
22 the certificate.

23 **317 Certificates to be made available**

- 24 (1) A person contravenes this subsection if:  
25 (a) the person is the owner or master of a vessel; and  
26 (b) a certificate under this Act is in force in relation to the vessel;  
27 and  
28 (c) a copy of the certificate is not made available at all  
29 reasonable times for examination on request by any of the  
30 following:  
31 (i) any person on board the vessel;
-

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- 1 (ii) AMSA;  
2 (iii) an inspector;  
3 (iv) an officer of Customs.

4 *Fault-based offence*

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

7 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

8 *Civil penalty*

- 9 (3) A person is liable to a civil penalty if the person contravenes  
10 subsection (1).

11 Civil penalty: 600 penalty units.

12 **318 AMSA may request a foreign country to issue certificates**

- 13 (1) AMSA may request the government of a foreign country to issue  
14 or to authorise the issue of, or to endorse or to authorise the  
15 endorsement of, in respect of a vessel registered in Australia, a  
16 certificate that:  
17 (a) the government of that country may issue or authorise the  
18 issue of, or endorse or authorise the endorsement of, in  
19 respect of a vessel registered in that country; and  
20 (b) corresponds, or substantially corresponds, with a certificate  
21 that AMSA may issue under this Act in respect of that vessel.
- 22 (2) A certificate issued or endorsed following such a request, and  
23 containing a statement that it has been so issued or endorsed, has  
24 effect, for the purposes of this Act, as if it were a certificate of the  
25 kind to which it corresponds issued or endorsed under this Act.

26 **319 Foreign countries may request AMSA to issue certificates**

- 27 (1) AMSA or another issuing body may, on request of the government  
28 of a foreign country:  
29 (a) issue, or authorise the issue of, a certificate to a vessel  
30 registered in the foreign country; or
-

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- 1 (b) endorse, or authorise the endorsement of, a certificate of a  
2 vessel registered in the foreign country;  
3 if AMSA or the other issuing body could do so if the vessel were  
4 registered in under the *Shipping Registration Act 1981*.
- 5 (2) A certificate issued or endorsed under this section:  
6 (a) must contain a statement to the effect that it has been issued  
7 or endorsed at the request of the government of the country in  
8 which the vessel is registered; and  
9 (b) has effect, for the purposes of this Act, as if it had been  
10 issued or endorsed by the government that requested its issue  
11 or its endorsement.

12 **320 AMSA may recognise certificates**

- 13 (1) AMSA may, by written instrument, recognise a certificate, or a  
14 class of certificates, issued in relation to a vessel under the Marine  
15 Safety (Domestic Commercial Vessel) National Law, a law of a  
16 State or Territory or a law of a foreign country if AMSA is  
17 satisfied:  
18 (a) that the certificate is the equivalent of, or that it is appropriate  
19 to recognise the certificate as the equivalent of, a certificate  
20 prescribed by the regulations; or  
21 (b) that the class of certificates is the equivalent of, or that it is  
22 appropriate to recognise the class as the equivalent of, a class  
23 of certificates prescribed by the regulations.
- 24 (2) At a time when a certificate in force in relation to a vessel is  
25 recognised under this section, the prescribed certificate is taken to  
26 be in force in relation to the vessel.
- 27 (3) AMSA may specify conditions to which the recognition of the  
28 certificate is subject.
- 29 (4) The recognition of a certificate ceases to have effect if a condition  
30 to which it is subject is contravened.
- 31 (5) An instrument made under subsection (1) is not a legislative  
32 instrument.  
33

1 **Part 5—Miscellaneous matters**

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

4 **321 Obstructing or hindering AMSA**

- 5 (1) A person must not obstruct or hinder AMSA in the performance of  
6 a function or the exercise of a power under this Act.

7 *Fault-based offence*

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

10 Penalty: 60 penalty units.

11 *Civil penalty*

- 12 (3) A person is liable to a civil penalty if the person contravenes  
13 subsection (1).

14 Civil penalty: 180 penalty units.

15 **322 Damaging AMSA vessels or equipment**

- 16 (1) A person must not damage a vessel or equipment owned or  
17 operated by AMSA.

18 *Fault-based offence*

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

21 Penalty: 60 penalty units.

22 *Civil penalty*

- 23 (3) A person is liable to a civil penalty if the person contravenes  
24 subsection (1).

25 Civil penalty: 180 penalty units.

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1 **Division 2—Provisions relating to various legal matters**

2 **323 Presumption of jurisdiction**

3 If, in any legal proceeding under this Act, a question arises whether  
4 a provision of this Act applies to a vessel or a person, the provision  
5 is taken to apply to the vessel or the person unless the contrary is  
6 proved.

7 **324 Immunity from suit**

8 Criminal or civil proceedings do not lie against:  
9 (a) AMSA; or  
10 (b) a member of the staff of AMSA; or  
11 (c) a delegate of AMSA; or  
12 (d) an inspector;  
13 because of an act done or omitted to be done in the exercise of any  
14 power conferred on AMSA or an inspector by or under this Act.

15 **325 Abolition of defence of common employment**

16 If injury or damage is suffered by a seafarer because of the  
17 wrongful act, neglect or default of another person engaged in  
18 common employment with the seafarer, the employer is liable in  
19 damages in respect of that injury or damage in the same manner  
20 and in the same cases as if they had not been engaged in common  
21 employment.

22 **326 Civil liability in relation to a vessel under pilotage**

- 23 (1) A pilot who has the conduct of a vessel is subject to the authority  
24 of the master of the vessel.
- 25 (2) The master of a vessel is not relieved of responsibility for the  
26 conduct and navigation of the vessel only because the vessel is  
27 under pilotage.
- 28 (3) The liability of the master or owner of a vessel in relation to loss or  
29 damage caused by the vessel or by a fault in the navigation of the



1 vessel is not affected only because pilotage is compulsory under a  
2 law of the Commonwealth, a State or a Territory.

3 (4) Neither the pilot of a vessel, nor any pilotage provider responsible  
4 for providing the pilot, is liable in civil proceedings for loss or  
5 damage caused to or by the vessel because of an act done, an  
6 instruction given, or information or advice provided in good faith  
7 and in the course of the pilot's duty.

### 8 **327 Service of summons**

9 Any summons or other document in any proceeding under this Act  
10 may (in addition to any other mode of service) be served on a  
11 seafarer by being left for the seafarer on board the seafarer's  
12 vessel, with the person being or appearing to be in command or  
13 charge of the vessel.

### 14 **328 Service of certain documents if no master**

- 15 (1) This section applies if:
- 16 (a) a statement or document (however described) is required or
  - 17 permitted to be given to the master of a vessel under this Act;
  - 18 and
  - 19 (b) the vessel does not have a master; and
  - 20 (c) the vessel is in Australia.
- 21 (2) The statement or document:
- 22 (a) may be given to the owner of the vessel in Australia; or
  - 23 (b) if there is no owner in Australia—may be given to an agent
  - 24 of the owner who is in Australia.

### 25 **329 Proceedings against the Crown**

- 26 (1) Nothing in this Act:
- 27 (a) authorises proceedings in rem in respect of:
  - 28 (i) a claim against the Commonwealth or a State or
  - 29 Territory; or

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- 1 (ii) the arrest, detention or sale of a Government vessel or  
2 of cargo or other property belonging to the  
3 Commonwealth or a State or Territory; or  
4 (b) gives to any person a lien on a Government vessel or cargo or  
5 other property belonging to the Commonwealth or a State or  
6 Territory.

7 (2) Section 10 does not limit subsection (1) of this section.

8 **330 Compensation for acquisition of property or causing damage**  
9 **etc.**

- 10 (1) If the operation of this Act would result in an acquisition of  
11 property from a person otherwise than on just terms, the  
12 Commonwealth is liable to pay a reasonable amount of  
13 compensation to the person.
- 14 (2) If the Commonwealth and the person do not agree on the amount  
15 of the compensation, the person may institute proceedings in an  
16 eligible court for the recovery from the Commonwealth of such  
17 reasonable amount of compensation as the eligible court  
18 determines.
- 19 (3) In this section:
- 20 *acquisition of property* has the same meaning as in paragraph  
21 51(xxxi) of the Constitution.
- 22 *just terms* has the same meaning as in paragraph 51(xxxi) of the  
23 Constitution.

24 **331 Offences against certain provisions of Act and regulations**

- 25 (1) Section 19B of the *Crimes Act 1914* does not apply to offences  
26 against the following provisions of this Act:
- 27 (a) section 34;  
28 (b) section 35;  
29 (c) section 36;  
30 (d) section 37;  
31 (e) section 38;

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- 1 (f) section 52;  
2 (g) section 66;  
3 (h) section 103;  
4 (i) section 104;  
5 (j) section 105;  
6 (k) section 106;  
7 (l) section 107;  
8 (m) section 114;  
9 (n) section 115;  
10 (o) section 117;  
11 (p) section 118;  
12 (q) section 119;  
13 (r) section 126;  
14 (s) section 127;  
15 (t) section 140;  
16 (u) section 141;  
17 (v) section 142;  
18 (w) section 143;  
19 (x) section 169;  
20 (y) section 185;  
21 (z) section 186;  
22 (za) section 187;  
23 (zb) section 335.

- 24 (2) The regulations may provide that section 19B of the *Crimes Act*  
25 *1914* does not apply to specified offences against the regulations.

26 **332 Physical elements of offences**

27 For the purposes of applying Chapter 2 of the *Criminal Code* to an  
28 offence against this Act, the physical elements of the offence are  
29 set out in the subsection contravention of which is an offence.

30 Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal  
31 responsibility.  
32

1 **Division 3—Alternative constitutional bases**

2 **333 Alternative constitutional bases**

- 3 (1) Without limiting its effect apart from this section, this Act also has  
4 effect as provided by this section.
- 5 (2) This Act also has the effect that it would have if its operation were  
6 expressly confined to acts or omissions of corporations to which  
7 paragraph 51(xx) of the Constitution applies.
- 8 (3) This Act also has the effect that it would have if its operation were  
9 expressly confined to acts or omissions taking place in the course  
10 of, or in relation to, trade or commerce:  
11 (a) between Australia and a place outside Australia; or  
12 (b) among the States; or  
13 (c) within a Territory, between a State and a Territory or  
14 between 2 Territories.
- 15 (4) This Act also has the effect it would have if the provisions of this  
16 Act were expressly confined to acts or omissions relating to  
17 lighthouses, lightships, beacons and buoys.
- 18 (5) This Act also has the effect that it would have if its operation were  
19 expressly confined to acts or omissions taking place in a Territory.
- 20 (6) This Act also has the effect that it would have if its operation were  
21 expressly confined to acts or omissions taking place outside  
22 Australia.
- 23 (7) This Act also has the effect that it would have if its operation were  
24 expressly confined to matters:  
25 (a) in relation to which the Commonwealth is under an  
26 obligation under an international agreement; or  
27 (b) that are of international concern.
- 28 (8) This Act also has the effect that it would have if the provisions of  
29 this Act relating to vessels or the acts or omissions of persons in,  
30 around or on vessels were expressly confined to cases where the  
31 vessel is:  
32 (a) engaged or used in trade or commerce:
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- 1 (i) between Australia and a place outside Australia; or  
2 (ii) among the States; or  
3 (iii) within a Territory, between a State and a Territory or  
4 between 2 Territories; or  
5 (b) operated or controlled by a corporation to which paragraph  
6 51(xx) of the Constitution applies.
- 7 (9) This Act also has the effect it would have if the provisions of this  
8 Act were expressly confined to acts or omissions relating to postal,  
9 telegraphic, telephonic or other like services.

10 *Definitions*

- 11 (10) A term used in this section and the Constitution has the same  
12 meaning in this section as it has in the Constitution.  
13

1     **Division 4—Exemption**

2     **334 Power of exemption**

- 3             (1) The Minister or AMSA may exempt from the application of this  
4             Act, or specified provisions of this Act:
- 5                 (a) a vessel or class of vessels; or  
6                 (b) a person or class of persons.
- 7             (2) An exemption under subsection (1) may be confined to one or both  
8             of the following:
- 9                 (a) one or more specified periods;  
10                (b) one or more specified voyages or operations.
- 11            (3) An exemption under subsection (1) is subject to such conditions (if  
12            any) as are specified in the instrument of exemption.
- 13            (4) An exemption under subsection (1) is not a legislative instrument.
- 14            (5) An exemption under subsection (1) must not be inconsistent with  
15            an obligation of Australia under an international agreement.
- 16            (6) Before making an exemption under subsection (1), the Minister or  
17            AMSA must be satisfied that the exemption will not jeopardise the  
18            safety of a vessel or persons on board a vessel.

19     **335 Person must not contravene condition of exemption**

- 20             (1) A person must not contravene a condition of an exemption under  
21             subsection 334(3) that applies to a vessel or to the person.

22             *Fault-based offence*

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

25             Penalty: 600 penalty units.  
26

1 **Division 5—Other matters**

2 **336 Publication of information about vessels**

- 3 (1) AMSA may publish such information as is prescribed by the  
4 regulations that is obtained about a vessel:  
5 (a) during an inspection or survey of that vessel; or  
6 (b) during an inspection or survey of that vessel conducted  
7 otherwise than under this Act; or  
8 (c) otherwise than by an inspection or survey.
- 9 (2) The regulations may make provision in relation to:  
10 (a) the manner in which information obtained:  
11 (i) during an inspection or survey; or  
12 (ii) otherwise than by inspection or survey;  
13 will be published; and  
14 (b) the nature of the information that will be published; and  
15 (c) the time at which the publication of information will occur.
- 16 (3) This section does not permit AMSA to publish information if the  
17 publication of the information would contravene the *Privacy Act*  
18 *1988* or another law of the Commonwealth.

19 **337 Penalty for receiving fees for supply of seafarers**

- 20 (1) A person must not demand or receive, directly or indirectly,  
21 remuneration from an individual for providing or promising to  
22 provide the individual with employment as a seafarer on a vessel.
- 23 (2) A person commits an offence if the person contravenes  
24 subsection (1).  
25 Penalty: 30 penalty units.
- 26 (3) A person is liable to a civil penalty if the person contravenes  
27 subsection (1).  
28 Civil penalty: 300 penalty units.

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1     **338 AMSA may approve form**

2                     AMSA may, in writing, approve a form for the purposes of a  
3                     provision of this Act.  
4



1 **Part 6—Regulations and other legislative**  
2 **instruments**  
3

4 **339 General regulation-making power**

- 5 (1) The Governor-General may make regulations prescribing matters:  
6 (a) required or permitted by this Act to be prescribed; or  
7 (b) necessary or convenient to be prescribed for carrying out or  
8 giving effect to this Act.
- 9 (2) Without limiting subsection (1), regulations may make provision  
10 for or in relation to the following:  
11 (a) design and construction of vessels;  
12 (b) machinery and equipment to be carried on board vessels,  
13 including but not limited to the following:  
14 (i) machinery and equipment for sending or receiving  
15 distress, urgency and other signals;  
16 (ii) radio installations, radio navigational aids and  
17 communications equipment;  
18 (iii) compasses;  
19 (iv) lights;  
20 (c) operating, maintaining, checking and testing any such  
21 machinery and equipment;  
22 (d) marking of load lines on vessels;  
23 (e) the stability of vessels including information about, and  
24 testing of, the stability of vessels;  
25 (f) operating watertight doors;  
26 (g) saving of life at sea, including:  
27 (i) the equipment to be carried on board vessels; and  
28 (ii) measures to be carried out for the purpose of saving life  
29 at sea;  
30 (h) prevention, detection and extinguishment of fires at sea,  
31 including:  
32 (i) equipment to be carried on board vessels; and  
33 (ii) measures to be carried out for the purpose of preventing,  
34 detecting and extinguishing fires at sea;

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- 1 (i) maintenance, testing, survey and certification of vessels;  
2 (j) special purpose vessels;  
3 (k) nuclear vessels;  
4 (l) logbooks;  
5 (m) records relating to compliance with this Act;  
6 (n) the exercise of powers, and performance of functions, of  
7 issuing bodies under this Act;  
8 (o) matters of a transitional nature (including matters of an  
9 application or saving nature) arising out of the enactment of  
10 this Act or the repeal of the *Navigation Act 1912* or the  
11 *Lighthouses Act 1911*.
- 12 (3) Regulations made for the purposes of paragraph (2)(o) may:  
13 (a) provide for specified certificates in force under the  
14 *Navigation Act 1912* immediately before its repeal to have  
15 effect, subject to any specified conditions or limitations, for  
16 the purposes of this Act or specified provisions of this Act as  
17 if those certificates had been issued under specified  
18 provisions of this Act; and  
19 (b) provide for specified things done under the *Navigation Act*  
20 *1912*, or under regulations or instruments made under that  
21 Act, to have effect, subject to any specified conditions or  
22 limitations, for the purposes of this Act or specified  
23 provisions of this Act as if those things had been done under  
24 specified provisions of this Act; and  
25 (c) provide that all or specified agreements that were in force  
26 immediately before the repeal of the *Navigation Act 1912* and  
27 that, immediately before that repeal complied with one or  
28 more specified provisions of Division 8 of Part II of that Act,  
29 comply with regulations made for the purposes of subsection  
30 54(5) of this Act, subject to specified limitations.
- 31 This subsection does not limit paragraph (2)(o).
- 32 (4) To avoid doubt, regulations under this section may be expressed to  
33 apply to vessels that are not regulated Australian vessels.

1 **340 Regulation-making power to implement Conventions**

2 (1) The regulations may make provision in relation to giving effect to  
3 the following:

- 4 (a) the Safety Convention;  
5 (b) the Prevention of Collisions Convention;  
6 (c) the Prevention of Pollution Convention;  
7 (d) the Load Lines Convention;  
8 (e) the Tonnage Convention;  
9 (f) the Container Convention;  
10 (g) the Limitation of Liability for Maritime Claims Convention;  
11 (h) the STCW Convention.

12 Note: Sections 12 and 13 may affect the application of the regulations in  
13 certain circumstances relating to the Marine Safety (Domestic  
14 Commercial Vessel) National Law or State and Territory law.

15 (2) Regulations that make provision in relation to giving effect to the  
16 Container Convention must not impose, or authorise the imposition  
17 of, structural safety requirements or tests on containers to which  
18 the Container Convention applies that are not required or permitted  
19 by that Convention to be imposed on such containers.

20 Note: Section 13 may affect the application of the regulations in certain  
21 circumstances relating to State and Territory law.

22 (3) To avoid doubt, regulations made for the purposes of this section  
23 may be expressed to apply to vessels that are not regulated  
24 Australian vessels.

25 **341 General provisions relating to regulations**

26 (1) The regulations may provide for:

- 27 (a) the imposition of penalties of not more than 50 penalty units  
28 for a contravention of:  
29 (i) a provision of the regulations; or  
30 (ii) a notice, order, direction or instruction given, issued or  
31 made under, or in force because of, the regulations; and  
32 (b) the imposition of civil penalties for a contraventions of a kind  
33 referred to in subparagraph (a)(i) or (ii) of not more than:  
34 (i) 50 penalty units for an individual; or
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- 1 (ii) 250 penalty units for a body corporate;
- 2 (c) the manner in which notices, orders, directions, instructions
- 3 or other documents under this Act may be given, issued or
- 4 notified; and
- 5 (d) the charging of fees in respect of any matters under this Act.
- 6 (2) Despite section 14 of the *Legislative Instruments Act 2003*, the
- 7 regulations may make provision in relation to a matter by applying,
- 8 adopting or incorporating, with or without modification, any matter
- 9 contained in an instrument or other document:
- 10 (a) as in force or existing at a particular time; or
- 11 (b) as in force or existing from time to time;
- 12 even if the instrument or other document does not exist when the
- 13 regulations come into operation.
- 14 (3) The regulations may:
- 15 (a) vest an eligible court with jurisdiction in a matter or matters
- 16 arising under the regulations; and
- 17 (b) provide for review of decisions under the regulations.

18 **342 Marine Orders**

- 19 (1) AMSA may, by legislative instrument, make an order (to be known
- 20 as a Marine Order) with respect to any matter for which provision
- 21 must or may be made by the regulations.
- 22 (2) If a Marine Order is inconsistent with this Act, the Marine Order is
- 23 of no effect to the extent of the inconsistency.
- 24 (3) A reference to this Act in subsection (2) does not include a
- 25 reference to a Marine Order.
- 26 (4) Despite section 14 of the *Legislative Instruments Act 2003*, a
- 27 Marine Order may make provision in relation to a matter by
- 28 applying, adopting or incorporating, with or without modification,
- 29 any matter contained in an instrument or other document:
- 30 (a) as in force or existing at a particular time; or
- 31 (b) as in force or existing from time to time;
- 32 even if the instrument or other document does not exist when the
- 33 Marine Order comes into operation.

1 **343 Regulations and orders under the *Navigation Act 1912***

- 2 (1) The regulations may provide for specified regulations and orders  
3 that were in force under the *Navigation Act 1912* immediately  
4 before its repeal to have effect, for the purposes of this Act, with  
5 such modifications as are specified in the regulations.
- 6 (2) The Marine Orders may provide for specified orders that were in  
7 force under the *Navigation Act 1912* immediately before its repeal  
8 to have effect, for the purposes of this Act, with such modifications  
9 as are specified in the Marine Orders.