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Maritime Powers Bill 2012

No. , 2012

(Attorney-General)

**A Bill for an Act to provide for the administration
and enforcement of Australian laws in maritime
areas, and for related purposes**

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1 **A Bill for an Act to provide for the administration**
2 **and enforcement of Australian laws in maritime**
3 **areas, and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Introduction**

6 **Division 1—Preliminary**

7 **1 Short title**

8 This Act may be cited as the *Maritime Powers Act 2012*.

Section 2

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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 122	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.	

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.

13 **3 Act binds the Crown**

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

15 **4 Application of Act**

- 16 (1) This Act extends to every external Territory.
17 (2) This Act extends to acts, omissions, matters and things outside
18 Australia.
-

1 **Division 2—Guide to this Act**

2 **7 Guide to this Act**

3 This Act provides a broad set of enforcement powers for use in,
4 and in relation to, maritime areas. Most of these powers are set out
5 in Part 3.

6 The powers can be used by maritime officers to give effect to
7 Australian laws and international agreements and decisions.

8 The following are maritime officers:

- 9 (a) Customs officers;
- 10 (b) members of the Australian Defence Force;
- 11 (c) members of the Australian Federal Police;
- 12 (d) other persons appointed by the Minister.

13 An authorisation is necessary to begin the exercise of powers in
14 relation to a vessel, installation, aircraft, protected land area or
15 isolated person. The only exceptions are the exercise of aircraft
16 identification powers and the exercise of powers to ensure the
17 safety of persons.

18 Once an authorisation is in force, maritime officers can exercise
19 powers for a range of purposes.

20 In accordance with international law, the exercise of powers is
21 limited in places outside Australia.

22

1 **Division 3—Definitions**

2 **8 Definitions**

3 In this Act:

4 ***actionable contravention***, in relation to an aircraft, has the
5 meaning given by section 10.

6 ***aircraft*** means any machine or craft that can derive support in the
7 atmosphere from the reactions of the air, other than the reactions of
8 the air against the earth's surface.

9 ***aircraft identification powers*** has the meaning given by subsection
10 55(4).

11 ***approval***, given by the Minister for the exercise of powers, has the
12 meaning given by section 24.

13 ***archipelagic waters*** has the same meaning as in the Convention.

14 ***Australia***, when used in a geographical sense, includes:

- 15 (a) the external Territories; and
16 (b) the territorial seas of Australia and the external Territories;
17 and
18 (c) any installation attached to:
19 (i) the continental shelf of Australia or an external
20 Territory; or
21 (ii) the seabed within the exclusive economic zone of
22 Australia or an external Territory; and
23 (d) the safety zone around any such installation; and
24 (e) the airspace above Australia (including the airspace above
25 the areas covered by paragraphs (a) to (d)).

26 ***Australian aircraft*** means:

- 27 (a) an aircraft registered, or required to be registered, under the
28 *Civil Aviation Safety Regulations 1998* as an Australian
29 aircraft; or
30 (b) a Commonwealth aircraft.

Section 8

- 1 ***Australian law:***
2 (a) means a law of the Commonwealth or a State or Territory,
3 and includes this Act; but
4 (b) does not include a law prescribed by the regulations.
- 5 ***Australian national*** means:
6 (a) an Australian citizen; or
7 (b) a body corporate established by or under a law of the
8 Commonwealth or a State or Territory; or
9 (c) the Commonwealth or a State or Territory.
- 10 ***Australian vessel*** means:
11 (a) an Australian ship within the meaning of the *Shipping*
12 *Registration Act 1981*; or
13 (b) a vessel that is not registered under the law of a foreign
14 country and is either wholly owned or solely operated by:
15 (i) one or more residents of Australia; or
16 (ii) one or more Australian nationals; or
17 (iii) one or more residents of Australia and one or more
18 Australian nationals.
- 19 ***authorisation*** has the meaning given by subsection 23(1).
- 20 ***authorising officer*** has the meaning given by subsection 16(1).
- 21 ***border controlled drug*** has the same meaning as in Part 9.1 of the
22 *Criminal Code*.
- 23 ***border controlled plant*** has the same meaning as in Part 9.1 of the
24 *Criminal Code*.
- 25 ***chased without interruption***, in relation to a vessel, has the
26 meaning given by section 42.
- 27 ***Civil Aviation Regulations*** means regulations made under the *Civil*
28 *Aviation Act 1988*, and includes any of those regulations as in force
29 under the law of a State.
- 30 ***Commonwealth aircraft*** means an aircraft that is owned by, or in
31 the possession or control of, the Commonwealth or a
32 Commonwealth authority.

1 **Commonwealth officer** means a person who:
2 (a) holds, or performs the duties of, an appointment, office or
3 position under a law of the Commonwealth; or
4 (b) is otherwise in the service of the Commonwealth.

5 **Commonwealth ship** means a vessel that is owned by, or in the
6 possession or control of, the Commonwealth or a Commonwealth
7 authority.

8 **contiguous zone** has the same meaning as in the Convention.

9 **continental shelf** has the same meaning as in the Convention.

10 **continuous exercise of powers** has the meaning affected by
11 section 11.

12 **contravention**, of a law, includes an offence against the law.

13 **Convention** means the United Nations Convention on the Law of
14 the Sea done at Montego Bay on 10 December 1982.

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

19 **conveyance** includes a vessel, aircraft or vehicle.

20 **cooperating agency** has the meaning given by subsection 116(4).

21 **country**, when used in a geographical sense, includes:

- 22 (a) the territorial sea, and any archipelagic waters, of the
23 country; and
24 (b) any installation attached to the continental shelf, or the
25 seabed within the exclusive economic zone, of the country;
26 and
27 (c) any safety zone around any such installation; and
28 (d) the airspace above the country (including the airspace above
29 the areas covered by paragraphs (a) to (c)).

30 **detained aircraft** has the meaning given by subsection 69(5).

31 **detained vessel** has the meaning given by subsection 69(4).

Section 8

1 **detention provision** has the meaning given by subsection 73(2).

2 **engage in conduct** means:

- 3 (a) do an act; or
4 (b) omit to perform an act.

5 **evidence and warrants authorisation** has the meaning given by
6 subsection 20(2).

7 **evidential material** means any thing that may afford evidence of a
8 contravention of an Australian law, including such a thing in
9 electronic form.

10 **exclusive economic zone** has the same meaning as in the
11 Convention.

12 **Foreign Affairs Minister** means the Minister administering the
13 *Diplomatic Privileges and Immunities Act 1967*.

14 **foreign aircraft** means an aircraft other than an Australian aircraft.

15 **foreign installation** means an installation controlled by a foreign
16 country.

17 **foreign vessel** means a vessel other than an Australian vessel.

18 **frisk search** has the meaning given by subsection 61(5).

19 **installation:**

- 20 (a) means:
21 (i) an artificial island within the meaning of the
22 Convention; or
23 (ii) an installation within the meaning of the Convention; or
24 (iii) a structure within the meaning of the Convention; but
25 (b) does not include a thing that has been, or could be, such an
26 island, installation or structure but is not installed.

27 **international agreement** means an agreement or arrangement
28 between Australia and one or more other countries.

29 **international decision** means a decision made by:

- 30 (a) the Security Council of the United Nations; or

1 (b) another international body that, under international law,
2 makes decisions that are binding on its members.

3 ***involved***, in a contravention of a law, has the meanings given by
4 section 9.

5 ***isolated person*** means a person who is not on, or in the vicinity of,
6 a vessel, installation, aircraft or protected land area.

7 ***maritime officer*** has the meaning given by subsection 104(1).

8 ***maritime powers*** means the powers in Part 3.

9 ***migration zone*** has the same meaning as in the *Migration Act*
10 *1958*.

11 ***monitoring law*** means:

- 12 (a) the *Customs Act 1901*; or
13 (b) the *Fisheries Management Act 1991*; or
14 (c) the *Migration Act 1958*; or
15 (d) the *Torres Strait Fisheries Act 1984*; or
16 (e) section 72.13 or Division 307 of the *Criminal Code*; or
17 (f) clause 8 of Schedule 1 to the *Environment Protection and*
18 *Biodiversity Conservation Act 1999*; or
19 (g) a law prescribed by the regulations.

20 ***ordinary search*** has the meaning given by subsection 61(4).

21 ***personal information*** has the same meaning as in the *Privacy Act*
22 *1988*.

23 ***person assisting***, in the exercise of powers under this Act, has the
24 meaning given by subsection 38(5).

25 ***person in charge***, in relation to the exercise of powers by a
26 maritime officer:

- 27 (a) in relation to a vessel, installation or aircraft—means the
28 person who appears to the officer to be in charge of the
29 vessel, installation or aircraft; or

Section 8

1 (b) in relation to a protected land area—means the person who
2 appears to the officer to be in control, possession or
3 occupation of the land, or any premises on the land.

4 ***protected land area*** means an area of land that is:

- 5 (a) outside the States and internal Territories; and
6 (b) prescribed by the regulations.

7 ***resident of Australia*** means:

- 8 (a) an individual who is usually resident in Australia and whose
9 continued presence in Australia is not subject to a limitation
10 as to time imposed by law; or
11 (b) a body corporate that has its principal place of business in
12 Australia.

13 ***retained thing*** has the meaning given by subsection 68(3).

14 ***safety zone***, in relation to an installation:

- 15 (a) has the same meaning as in the Convention; and
16 (b) includes the column of water below that zone.

17 ***seizable transit goods*** means:

- 18 (a) goods that are connected, either directly or indirectly, with
19 the carrying out of a terrorist act, whether the terrorist act has
20 occurred, is occurring or is likely to occur; or
21 (b) goods, the existence or the shipment of which, prejudices, or
22 is likely to prejudice, Australia's defence or security or
23 international peace and security.

24 Note: Seizable transit goods may be forfeited to the Commonwealth under
25 the *Customs Act 1901*.

26 ***seized thing*** has the meaning given by subsection 67(3).

27 ***support vessel*** has the meaning given by subsection 9(4).

28 ***territorial sea*** has the same meaning as in the Convention.

29 ***terrorist act*** has the same meaning as in Part 5.3 of the *Criminal*
30 *Code*.

31 ***thing*** includes a record or document.

1 **this Act** includes the regulations.

2 **vessel** means a vessel or boat of any description and includes a
3 hovercraft and any floating structure, but does not include an
4 installation.

5 **vessel identification powers** means the powers set out in the
6 following provisions:

- 7 (a) section 52 (boarding vessels, installations and aircraft);
8 (b) section 53 (requirement to facilitate boarding);
9 (c) section 54 (additional powers—vessels);
10 (d) section 57 (requiring answers, records and documents);
11 (e) section 58 (obtaining readings);
12 (f) section 59 (searching places);
13 (g) section 61 (searching persons);
14 (h) section 63 (examining things);
15 (i) section 66 (securing weapons).

16 **vessels without nationality authorisation** has the meaning given
17 by subsection 21(2).

18 **weapon** includes a thing that:

- 19 (a) is capable of being used to inflict bodily injury (including
20 ammunition); or
21 (b) is capable of being used to help a person escape from
22 detention or custody; or
23 (c) is capable of being used to cause damage to a vessel,
24 installation or aircraft; or
25 (d) except for the absence of, or a defect in, a part of the thing,
26 would be a weapon of a kind mentioned in paragraph (a), (b)
27 or (c); or
28 (e) is reasonably capable of being converted into a weapon of a
29 kind mentioned in paragraph (a), (b) or (c).

Section 9

1 **9 Involved in a contravention**

2 *Vessels, installations, aircraft and protected land areas*

- 3 (1) A vessel, installation, aircraft or protected land area is **involved** in a
4 contravention of a law, if:
5 (a) the law has been, is being, or is intended to be, contravened
6 on, or in the vicinity of, the vessel, installation, aircraft or
7 land; or
8 (b) there is some other connection between the vessel,
9 installation, aircraft or land and a contravention, or intended
10 contravention, of the law.

11 *Vessels, installations and aircraft*

- 12 (2) A vessel, installation or aircraft is **involved** in a contravention of a
13 law, if the vessel, installation or aircraft has been, is being, or is
14 intended to be, used in contravention of the law.

15 *Support vessels*

- 16 (3) A vessel is **involved** in a contravention of a law if it has been, is
17 being, or is intended to be, used:
18 (a) in direct support of another vessel or aircraft that is involved
19 in a contravention of the law; or
20 (b) in preparation for a contravention of the law in which another
21 vessel or aircraft is involved.
- 22 (4) A vessel involved in a contravention of a law within the meaning
23 of subsection (3) is a **support vessel**.

24 *Isolated persons*

- 25 (5) An isolated person is **involved** in a contravention of a law if:
26 (a) the law has been, is being, or is intended to be, contravened
27 by the person; or
28 (b) there is some other connection between the person and a
29 contravention, or intended contravention, of the law.

1 **10 Actionable contraventions—aircraft**

2 A contravention of a law is an *actionable contravention* in relation
3 to an aircraft if:

- 4 (a) the law is prescribed by the regulations; or
5 (b) the Minister has approved the exercise of maritime powers in
6 relation to the aircraft for the purposes of investigating the
7 contravention, or contraventions in general, and the approval
8 has not lapsed.

9 Note: For *approval* by the Minister, see Division 3 of Part 2.

10 **11 Continuous exercise of powers**

11 For the purposes of this Act, the *continuous exercise of powers*
12 does not end only because there is a period of time between the
13 exercise of one or more of those powers.
14

1 **Division 4—International agreements and decisions**

2 **12 When international agreements and decisions apply**

3 An international agreement or international decision applies to a
4 vessel, installation or aircraft at a particular time if:

5 (a) the agreement or decision provides for the exercise of powers
6 by Australia in relation to the vessel, installation or aircraft at
7 that time; and

8 (b) either:

9 (i) the agreement or decision is prescribed by the
10 regulations; or

11 (ii) the Minister has approved the exercise of powers under
12 the agreement or decision in relation to the vessel,
13 installation or aircraft, and the approval has not lapsed.

14 Note 1: For *international agreement* and *international decision*, see
15 section 8.

16 Note 2: For *approval* by the Minister, see Division 3 of Part 2.

17 **13 Treating foreign vessels as Australian vessels**

18 An Australian law applies in relation to a foreign vessel as if the
19 foreign vessel were an Australian vessel if:

20 (a) an international agreement provides for the law to so apply;
21 and

22 (b) the country of the vessel's nationality is a party to the
23 agreement.

24 Note: For *international agreement*, see section 8.

25 **14 Applying Australian law in other places**

26 *Places in other countries*

27 (1) An Australian law applies in, or in relation to, a place in another
28 country as if that place were in Australia if an agreement or
29 arrangement between Australia and the other country provides for
30 the law to so apply.

1

Places in exclusive economic zones of other countries

2

- (2) An Australian law applies in, or in relation to, a place in the exclusive economic zone of another country as if that place were in the exclusive economic zone of Australia if an agreement or arrangement between Australia and the other country provides for the law to so apply.

3

4

5

6

7

Places on or above the continental shelves of other countries

8

- (3) An Australian law applies in, or in relation to, a place on or above the continental shelf of another country as if that place were on or above the continental shelf of Australia if an agreement or arrangement between Australia and the other country provides for the law to so apply.

9

10

11

12

13

1 **Part 2—Exercising powers**

2 **Division 1—Introduction**

3 **15 Guide to this Part**

4 This Part provides for the exercise of maritime powers and powers
5 specified in international agreements and decisions.

6 An authorisation must be given by an authorising officer before
7 powers can be exercised in relation to a vessel, installation,
8 aircraft, protected land area or isolated person. The only exceptions
9 are:

- 10 (a) the exercise of aircraft identification powers to
11 identify aircraft; and
- 12 (b) the exercise of maritime powers to ensure the
13 safety of a maritime officer or any other person.

14 Once an authorisation is in force, a maritime officer may exercise
15 powers for the purposes of the authorisation, and for other
16 purposes set out in Division 4.

17 The exercise of powers in relation to a vessel, installation, aircraft
18 or protected land area extends to persons and things with a
19 connection to the vessel, installation, aircraft or protected land
20 area.

21 Powers can be exercised in, and in relation to, maritime areas, but
22 their exercise is limited in places outside Australia (see
23 Division 5).

24

1 **Division 2—Authorising the exercise of maritime powers**

2 **16 Authorising officers**

- 3 (1) For the purposes of authorising the exercise of maritime powers in
4 relation to a vessel, installation, aircraft, protected land area or
5 isolated person, each of the following is an *authorising officer*:
6 (a) the most senior maritime officer who is in a position to
7 exercise any of the maritime powers in person;
8 (b) the most senior member or special member of the Australian
9 Federal Police who is in a position to exercise any of the
10 maritime powers in person;
11 (c) the most senior maritime officer on duty in a duly established
12 operations room;
13 (d) the person in command of a Commonwealth ship or
14 Commonwealth aircraft from which the exercise of powers is
15 to be directed or coordinated;
16 (e) a person appointed in writing by the Minister.

17 *Limited appointments*

- 18 (2) The Minister may appoint a person under paragraph (1)(e) as an
19 authorising officer:
20 (a) for the purposes of authorising the exercise of powers in
21 relation to one or more of the following only:
22 (i) a specified law;
23 (ii) a specified international agreement or international
24 decision; and
25 (b) subject to any other conditions specified in the appointment.

26 *Purported authorisations*

- 27 (3) A purported authorisation given by a person who reasonably
28 believed that he or she was an authorising officer has effect as if it
29 were an authorisation.

Section 17

1 **17 Contraventions**

2 *Vessels, installations, protected land areas and isolated persons*

- 3 (1) An authorising officer may authorise the exercise of maritime
4 powers in relation to a vessel, installation, protected land area or
5 isolated person if the officer suspects, on reasonable grounds, that
6 the vessel, installation, land or person is involved in a
7 contravention of an Australian law.

8 Note: For *involved* in a contravention of a law, see section 9.

9 *Aircraft—actionable contraventions*

- 10 (2) An authorising officer may authorise the exercise of maritime
11 powers in relation to an aircraft if:
12 (a) the officer suspects, on reasonable grounds, that the aircraft is
13 involved in a contravention of an Australian law; and
14 (b) the contravention is an actionable contravention in relation to
15 the aircraft.

16 Note 1: For *involved* in a contravention of a law, see section 9.

17 Note 2: For *actionable contravention*, see section 10.

18 **18 Monitoring laws**

19 *Vessels, installations, protected land areas and isolated persons*

20 An authorising officer may authorise the exercise of maritime
21 powers in relation to a vessel, installation, protected land area or
22 isolated person for the purposes of administering or ensuring
23 compliance with a monitoring law.

24 Note: For *monitoring law*, see section 8.

25 **19 International agreements and decisions**

26 *Vessels, installations and aircraft*

27 An authorising officer may authorise the exercise of maritime
28 powers in relation to a vessel, installation or aircraft if the officer

1 suspects, on reasonable grounds, that an international agreement or
2 international decision applies to the vessel, installation or aircraft.

3 Note 1: For when international agreements and international decisions apply,
4 see section 12.

5 Note 2: The regulations may provide for additional powers, or for limited
6 powers, to be exercised under an international agreement or
7 international decision: see section 33.

8 **20 Evidential material and warrants**

9 *Vessels, installations and protected land areas*

10 (1) An authorising officer may authorise the exercise of maritime
11 powers in relation to a vessel, installation or protected land area if
12 the officer:

13 (a) suspects, on reasonable grounds, that there is evidential
14 material on the vessel, installation or land; or

15 (b) believes, on reasonable grounds, that the exercise of the
16 powers is necessary to enforce a warrant that is in force under
17 an Australian law.

18 *Meaning of evidence and warrants authorisation*

19 (2) An authorisation under this section is an *evidence and warrants*
20 *authorisation*.

21 **21 Identifying vessels and aircraft**

22 *Vessels without nationality*

23 (1) An authorising officer may authorise the exercise of maritime
24 powers in relation to a vessel if:

25 (a) the vessel is not flying the flag of a State; or

26 (b) the officer suspects, on reasonable grounds, that the vessel:

27 (i) has been flying the flag of more than one State; or

28 (ii) is flying the flag of a State that it is not entitled to fly; or

29 (iii) is not entitled to fly the flag of any State.

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1 *Meaning of vessels without nationality authorisation*

2 (2) An authorisation under subsection (1) is a *vessels without*
3 *nationality authorisation*.

4 *Aircraft that fail to meet identification requirements*

5 (3) An authorising officer may authorise the exercise of maritime
6 powers in relation to an aircraft if:

7 (a) a requirement made in the exercise of aircraft identification
8 powers in relation to the aircraft has not been complied with;
9 or

10 (b) the officer suspects, on reasonable grounds, that information
11 given in response to such a requirement is false or misleading
12 in a material particular.

13 Note 1: Aircraft identification powers can be exercised without authorisation:
14 see section 28.

15 Note 2: For *aircraft identification powers*, see subsection 55(4).

16 **22 Seizable transit goods—aircraft**

17 An authorising officer may authorise the exercise of maritime
18 powers in relation to an aircraft if the officer suspects, on
19 reasonable grounds, that the aircraft is carrying seizable transit
20 goods.

21 Note: For *seizable transit goods*, see section 8.
22

1 **Division 3—Authorisations and approvals**

2 **23 When authorisations are in force**

- 3 (1) An *authorisation* given by an authorising officer under Division 2
4 is in force until:
5 (a) it is spent; or
6 (b) it lapses.

7 *When authorisation is spent*

- 8 (2) An authorisation is spent when the continuous exercise of powers
9 under the authorisation ends.

10 Note: The continuous exercise of powers does not end only because there is
11 a period of time between the exercise of one or more of those powers:
12 see section 11.

13 *When authorisation lapses*

- 14 (3) An authorisation lapses if powers have not been exercised under
15 the authorisation within 72 hours after it is given.

16 **24 When approvals lapse**

17 An *approval* given by the Minister for the purposes of one of the
18 following provisions lapses 14 days after it is given:

- 19 (a) paragraph 10(b) (actionable contraventions);
20 (b) subparagraph 12(b)(ii) (when international agreements and
21 decisions apply).

22 **25 Form of authorisations and approvals**

- 23 (1) An authorisation or approval need not be in writing.
24 (2) An authorisation or approval in writing is not a legislative
25 instrument.

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1 **26 Further authorisations and approvals**

2 Nothing in this Division prevents the giving of further
3 authorisations or approvals in relation to a particular vessel,
4 installation, aircraft, protected land area or isolated person.
5

1 **Division 4—Exercising powers**

2 **Subdivision A—Effect of Division**

3 **27 Effect of Division**

4 This Division has effect subject to Division 5 (geographical limits).

5 **Subdivision B—Exercising powers without authorisation**

6 **28 Identifying aircraft**

7 A maritime officer may, without authorisation, exercise aircraft
8 identification powers to identify an aircraft.

9 Note: For *aircraft identification powers*, see subsection 55(4).

10 **29 Ensuring safety**

11 A maritime officer may, without authorisation, exercise maritime
12 powers to ensure the safety of the officer or any other person.

13 **Subdivision C—Exercising powers with authorisation**

14 **30 Authorisation required**

15 If an authorisation is in force in relation to a vessel, installation,
16 aircraft, protected land area or isolated person, a maritime officer
17 may exercise powers in relation to the vessel, installation, aircraft,
18 land or person in accordance with this Subdivision.

19 **31 Exercising powers for authorised purpose**

20 The maritime officer may exercise maritime powers to do
21 whichever of the following applies in accordance with the
22 authorisation:

- 23 (a) investigate the contravention;
24 (b) administer or ensure compliance with the monitoring law;

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- 1 (c) administer, ensure compliance with or investigate a
2 contravention of the international agreement or international
3 decision;
4 (d) access or seize the evidential material;
5 (e) enforce the warrant that is in force under an Australian law;
6 (f) identify the vessel or aircraft;
7 (g) retain the seizable transit goods.

8 **32 Exercising powers for other purposes**

- 9 (1) The maritime officer may also exercise maritime powers as
10 follows:
11 (a) to investigate or prevent any contravention of an Australian
12 law that the officer suspects, on reasonable grounds, the
13 vessel, installation, aircraft, protected land area or isolated
14 person to be involved in;
15 (b) to administer or ensure compliance with any monitoring law;
16 (c) in the case of a vessel, installation or aircraft—to administer,
17 ensure compliance with or investigate a contravention of any
18 international agreement or international decision that the
19 officer suspects, on reasonable grounds, applies to the vessel,
20 installation or aircraft;
21 (d) to access or seize any thing that the officer suspects, on
22 reasonable grounds, is:
23 (i) evidential material; or
24 (ii) a border controlled drug or border controlled plant; or
25 (iii) owned by the Commonwealth or a State or Territory;
26 (e) to arrest any person whom the officer suspects, on reasonable
27 grounds, has committed an indictable offence against an
28 Australian law;
29 (f) to enforce any warrant that is in force under an Australian
30 law;
31 (g) to retain any thing that the officer believes, on reasonable
32 grounds, could be seized under an Australian law;
33 (h) in the case of a vessel or aircraft—to identify the vessel or
34 aircraft.

1 *Exception—aircraft in flight*

- 2 (2) Subsection (1) does not apply in relation to an aircraft in flight.

3 **33 Additional powers and limitations under international**
4 **agreements and decisions**

5 *Additional powers*

- 6 (1) The maritime officer may also exercise powers in the case of a
7 vessel, installation or aircraft if the powers are:
8 (a) specified in an international agreement or international
9 decision that applies to the vessel, installation or aircraft; and
10 (b) prescribed by the regulations as powers that may be exercised
11 in relation to vessels, installations or aircraft of that kind; and
12 (c) exercised for the purposes of administering, ensuring
13 compliance with or investigating a contravention of the
14 agreement or decision.

15 *Limitations on powers*

- 16 (2) However, the officer must not exercise a power in relation to a
17 vessel, installation or aircraft to administer, ensure compliance
18 with or investigate a contravention of an international agreement or
19 international decision if:
20 (a) the power is prescribed by the regulations as a power that
21 must not be exercised under the agreement or decision in
22 relation to vessels, installations or aircraft of that kind; or
23 (b) the officer is of a kind prescribed by the regulations as
24 officers who must not exercise powers under the agreement
25 or decision in relation to vessels, installations or aircraft of
26 that kind.
- 27 (3) Subsection (2) has effect despite any other provision of this
28 Subdivision.

1 **Subdivision D—Scope of power**

2 **34 Scope of power—vessels, installations, aircraft and protected**
3 **land areas**

4 A maritime officer exercising powers in relation to a vessel,
5 installation, aircraft or protected land area may exercise the
6 powers:

- 7 (a) on or in any part of the vessel, installation, aircraft or land; or
8 (b) in relation to any person or thing on, or in the vicinity of, the
9 vessel, installation, aircraft or land; or
10 (c) in relation to any person whom the officer suspects, on
11 reasonable grounds, was on or is intending to go onto the
12 vessel, installation, aircraft or land; or
13 (d) in relation to any thing that the officer suspects, on
14 reasonable grounds:
15 (i) was on or is to be taken onto the vessel, installation,
16 aircraft or land; or
17 (ii) is, was or is to be, attached to or controlled or directed
18 from the vessel, installation, aircraft or land.

19 **35 Warrants not required**

20 A maritime officer is not required to obtain a warrant to exercise
21 any power under this Act.

22 **36 Enforcing warrants**

23 In enforcing a warrant that is in force under an Australian law, a
24 maritime officer must comply with any requirements in the warrant
25 that would have to be complied with by a person executing the
26 warrant.

1 **Subdivision E—Using force and assistance**

2 **37 Using force**

3 (1) In exercising powers under this Act, a maritime officer may use
4 such force against a person or thing as is necessary and reasonable
5 in the circumstances.

6 (2) The maritime officer must not:

7 (a) subject a person to greater indignity than is necessary and
8 reasonable to exercise the powers; or

9 (b) do anything that is likely to cause the death of, or grievous
10 bodily harm to, a person unless:

11 (i) the officer believes on reasonable grounds that doing
12 that thing is necessary to protect life or prevent serious
13 injury to another person (including the officer); and

14 (ii) if the person is attempting to escape arrest by fleeing—
15 the person has, if practicable, been called on to
16 surrender and the officer believes on reasonable grounds
17 that the person cannot be apprehended in any other
18 manner.

19 **38 Requesting assistance**

20 (1) A maritime officer may request the assistance of any other person
21 (including an officer of another country).

22 (2) The request may include a request to:

23 (a) operate a vessel, aircraft or installation in a particular
24 manner; or

25 (b) operate machinery or equipment on a vessel, aircraft,
26 installation or land in a particular manner; or

27 (c) search a person; or

28 (d) assist the officer to access data held in, or accessible from, an
29 electronic device that is on a vessel, aircraft, installation or
30 land.

31 (3) Subsection (2) does not limit subsection (1).

32 (4) The person may refuse to assist.

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- 1 (5) If the person agrees to assist, he or she:
2 (a) must follow any directions given by the officer; and
3 (b) is a *person assisting*.

4 *Use of force by person assisting*

- 5 (6) A person assisting may use such force against a thing as is
6 necessary and reasonable in the circumstances.

7 **39 Requiring assistance**

- 8 (1) A maritime officer exercising powers in relation to a vessel,
9 installation, aircraft or protected land area may require the
10 assistance of a person who is on, in or in the vicinity of the vessel,
11 installation, aircraft or land.

12 Note: It is an offence to fail to comply with a requirement under this
13 subsection: see section 103.

- 14 (2) The requirement may include a requirement to:
15 (a) operate the vessel, installation or aircraft in a particular
16 manner; or
17 (b) operate machinery or equipment on the vessel, installation,
18 aircraft or land in a particular manner; or
19 (c) assist the officer to access data held in, or accessible from, an
20 electronic device or any other equipment on the vessel,
21 installation, aircraft or land; or
22 (d) use such force against a thing as is necessary and reasonable
23 in the circumstances.

- 24 (3) Subsection (2) does not limit subsection (1).

- 25 (4) However, the officer must not require the person to do anything
26 that would endanger the health or safety of the person or any other
27 person.
28

1 **Division 5—Geographical limits**

2 **Subdivision A—Exercising powers in other countries**

3 **40 Exercising powers in other countries**

4 This Act does not authorise the exercise of powers at a place in
5 another country unless the powers are exercised:

- 6 (a) at the request or with the agreement of the other country; or
7 (b) to administer, ensure compliance with or investigate a
8 contravention of an international agreement or international
9 decision that applies in that place; or
10 (c) to investigate a contravention of a law that:
11 (i) applies in that place; and
12 (ii) is prescribed by the regulations; or
13 (d) to administer or ensure compliance with a monitoring law
14 that:
15 (i) applies in that place; and
16 (ii) is prescribed by the regulations; or
17 (e) in connection with the exercise of powers in accordance with
18 this section, to ensure the safety of a maritime officer or any
19 other person.

20 **Subdivision B—Exercising powers between countries**

21 **41 Foreign vessels between countries**

- 22 (1) This Act does not authorise the exercise of powers in relation to a
23 foreign vessel at a place between Australia and another country
24 unless the powers are exercised:
25 (a) to investigate a contravention of a law that applies to foreign
26 vessels, or persons on foreign vessels, in that place; or
27 (b) in relation to a contravention covered by paragraph (a), to:
28 (i) arrest a person; or
29 (ii) require a person to cease conduct; or
30 (c) in the contiguous zone of Australia to:

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- 1 (i) investigate a contravention of a customs, fiscal,
2 immigration or sanitary law prescribed by the
3 regulations that occurred in Australia; or
4 (ii) prevent a contravention of such a law occurring in
5 Australia; or
6 (d) to administer or ensure compliance with a monitoring law
7 that applies to foreign vessels, or persons on foreign vessels,
8 in that place; or
9 (e) to administer, ensure compliance with or investigate a
10 contravention of an international agreement or international
11 decision that applies to foreign vessels, or persons on foreign
12 vessels, in that place; or
13 (f) to identify the vessel under a vessels without nationality
14 authorisation; or
15 (g) in relation to a support vessel supporting a vessel involved in
16 a contravention in Australia; or
17 (h) in relation to a support vessel supporting a vessel that is:
18 (i) an Australian vessel involved in a contravention within
19 the exclusive economic zone, or waters above the
20 continental shelf, of Australia; or
21 (ii) a foreign vessel involved in a contravention of a law
22 that applies to the foreign vessel, or persons on the
23 foreign vessel, in that place; or
24 (i) after the vessel has been chased without interruption to that
25 place; or
26 (j) at the request or with the agreement of the country of the
27 vessel's nationality; or
28 (k) to seize a border controlled drug or border controlled plant;
29 or
30 (l) in connection with the exercise of powers in accordance with
31 this section, to ensure the safety of a maritime officer or any
32 other person.

33 Note: For *chased without interruption*, see section 42.

- 34 (2) Only vessel identification powers may be exercised under
35 paragraph (1)(f).

36 Note: For *vessel identification powers*, see section 8.

1 **42 Meaning of *chased without interruption***

2 (1) A vessel is *chased without interruption* if:

- 3 (a) at a place where a maritime officer may exercise powers in
4 relation to the vessel without having chased the vessel, a
5 maritime officer requires the person in charge of the vessel
6 to:
7 (i) stop the vessel; or
8 (ii) facilitate boarding of the vessel; and
9 (b) the requirement is not complied with; and
10 (c) the vessel is chased from that place; and
11 (d) the chase is not interrupted.

12 Note: For requirements to facilitate boarding and stop, see sections 53 and
13 54.

14 (2) The chase is not interrupted only because:

- 15 (a) it is continued by another maritime officer; or
16 (b) it is begun, or taken over, by a vessel or aircraft (including a
17 vessel or aircraft of a foreign country) other than the vessel or
18 aircraft from which the requirement was made; or
19 (c) if the chase is continued by a vessel or aircraft of a foreign
20 country—there is no maritime officer on board the vessel or
21 aircraft; or
22 (d) the vessel is out of sight of any or all of the maritime officers,
23 or officers of a foreign country, involved in the chase; or
24 (e) the vessel cannot be tracked by remote means, including
25 radio, radar, satellite or sonar.

26 **43 Foreign installations between countries**

27 This Act does not authorise the exercise of powers in relation to a
28 foreign installation at a place between Australia and another
29 country unless the powers are exercised:

- 30 (a) to administer, ensure compliance with or investigate a
31 contravention of an international agreement or international
32 decision that applies to foreign installations, or persons on
33 foreign installations, in that place; or

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- 1 (b) at the request or with the agreement of the country that
2 controls the installation; or
3 (c) in connection with the exercise of powers in accordance with
4 this section, to ensure the safety of a maritime officer or any
5 other person.

6 **44 Foreign aircraft between countries**

7 This Act does not authorise the exercise of powers, other than
8 aircraft identification powers, in relation to a foreign aircraft at a
9 place between Australia and another country unless the powers are
10 exercised:

- 11 (a) to investigate a contravention of a law that applies to foreign
12 aircraft, or persons on foreign aircraft, in that place; or
13 (b) to administer, ensure compliance with or investigate a
14 contravention of an international agreement or international
15 decision that applies to foreign aircraft, or persons on foreign
16 aircraft, in that place; or
17 (c) at the request or with the agreement of the country of the
18 aircraft's nationality; or
19 (d) in connection with the exercise of powers in accordance with
20 this section, to ensure the safety of a maritime officer or any
21 other person.

22 **Subdivision C—Exercising powers in Australia**

23 **45 Foreign vessels in Australia—evidence and warrants**
24 **authorisations**

- 25 (1) This Act does not authorise the exercise of powers in relation to a
26 foreign vessel under an evidence and warrants authorisation at a
27 place in Australia unless:
28 (a) the vessel is at a place in the internal waters of Australia; or
29 (b) the vessel is passing through the territorial sea of Australia
30 after leaving the internal waters of Australia; or
31 (c) the powers are exercised:
32 (i) at the request or with the agreement of the country of
33 the vessel's nationality; or

- 1 (ii) in connection with the exercise of powers in accordance
2 with this section, to ensure the safety of a maritime
3 officer or any other person.

4 (2) Subsection (1) has effect subject to section 46.

5 **46 Vessels, installations and isolated persons in States and internal**
6 **Territories**

7 This Act does not authorise the exercise of powers in relation to a
8 vessel, installation or isolated person in a State or internal Territory
9 unless the powers are exercised:

- 10 (a) both:
11 (i) as part of the continuous exercise of powers begun
12 outside the State or internal Territory; and
13 (ii) in relation to conduct that occurred outside a State or
14 internal Territory; or
15 (b) in relation to a law of the Commonwealth in waters navigable
16 from waters of the sea; or
17 (c) in connection with the exercise of powers in accordance with
18 this section, to ensure the safety of a maritime officer or any
19 other person.

20 Note: The continuous exercise of powers does not end only because there is
21 a period of time between the exercise of one or more of those powers:
22 see section 11.

23 **47 Aircraft in States and internal Territories**

24 This Act does not authorise the exercise of powers in relation to an
25 aircraft in a State or internal Territory unless the powers are
26 exercised:

- 27 (a) as part of the continuous exercise of powers begun outside
28 the State or internal Territory in relation to conduct that
29 occurred outside a State or internal Territory; or
30 (b) in relation to a law of the Commonwealth; or
31 (c) in connection with the exercise of powers in accordance with
32 this section, to ensure the safety of a maritime officer or any
33 other person.

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1 Note: The continuous exercise of powers does not end only because there is
2 a period of time between the exercise of one or more of those powers:
3 see section 11.

4 **Subdivision D—Requests and agreements of other countries**

5 **48 Manner and form of requests and agreements**

6 (1) For the purposes of this Division, a request or agreement of another
7 country:

- 8 (a) need not be in writing; and
9 (b) includes the following:
10 (i) a standing request or agreement;
11 (ii) a request or agreement relating to particular
12 circumstances;
13 (iii) a request or agreement that covers a particular period of
14 time.

15 (2) The request or agreement may be made or given by any of the
16 following:

- 17 (a) the head of state of the country;
18 (b) the head of the government of the country;
19 (c) the minister of the government of the country who is
20 responsible for foreign affairs;
21 (d) the minister of the government of the country who is
22 responsible for defence;
23 (e) any official or body of the country that has, or could be
24 expected to have, authority to make or give such a request or
25 agreement.

26 **49 Scope of powers under requests and agreements**

27 (1) If:

- 28 (a) the request or agreement of another country is made or given
29 for the exercise of powers in relation to a vessel, installation,
30 aircraft or isolated person for a particular purpose (the *agreed*
31 *purpose*); and
32 (b) the request or agreement is relied on for the purposes of this
33 Division;

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- 1 a maritime officer may exercise any maritime power in relation to
2 the vessel, installation, aircraft or person for the agreed purpose.
- 3 (2) However, subsection (1) does not authorise the exercise of a power
4 specified in the request or agreement as a power that must not be
5 exercised under the request or agreement in relation to the vessel,
6 installation, aircraft or person.
7

1 **Part 3—Maritime powers**

2 **Division 1—Introduction**

3 **50 Guide to this Part**

4 This Part sets out maritime powers.

5 Maritime powers may be exercised only in accordance with Part 2
6 and include the following:

- 7 (a) boarding and entry powers;
- 8 (b) information gathering powers;
- 9 (c) search powers;
- 10 (d) powers to seize and retain things;
- 11 (e) powers to detain vessels and aircraft;
- 12 (f) powers to place, detain, move and arrest persons;
- 13 (g) the power to require persons to cease conduct that
14 contravenes Australian law.

15 **51 Effect of Part**

16 The powers in this Part may be exercised only in accordance with
17 Part 2.
18

1 **Division 2—Boarding**

2 **52 Boarding vessels, installations and aircraft**

- 3 (1) A maritime officer may board a vessel, installation or aircraft.
- 4 (2) If the person in charge of the vessel, installation or aircraft requests
5 the officer to produce identification, the officer must produce:
6 (a) the officer's identity card; or
7 (b) other written evidence of the fact that the officer is a
8 Commonwealth officer.
- 9 (3) If the officer fails to produce the identity card or other written
10 evidence, the officer must:
11 (a) leave the vessel, installation or aircraft; and
12 (b) not re-board the vessel, installation or aircraft without
13 producing the identity card or other written evidence.
- 14 (4) Subsections (2) and (3) do not apply if the officer is one of the
15 following in uniform:
16 (a) a member of the Australian Defence Force;
17 (b) an officer of Customs (within the meaning of the *Customs*
18 *Act 1901*);
19 (c) a member or special member of the Australian Federal
20 Police;
21 (d) an officer prescribed by the regulations.

22 **53 Requirement to facilitate boarding**

- 23 (1) A maritime officer may require the person in charge of a vessel,
24 installation or aircraft to take reasonable steps to facilitate the
25 boarding of the vessel, installation or aircraft.

26 Note: It is an offence to fail to comply with a requirement under this
27 subsection: see section 103.

- 28 (2) The requirement may be made by any reasonable means.
- 29 (3) The requirement is made whether or not the person in charge of the
30 vessel, installation or aircraft understands or is aware of the
31 requirement.

1 **54 Additional powers—vessels**

2 *Stopping, manoeuvring etc.*

- 3 (1) A maritime officer may require the person in charge of a vessel to
4 do one or more of the following:
5 (a) stop or manoeuvre the vessel;
6 (b) adopt a specified course or speed;
7 (c) maintain a specified course or speed.

8 Note: It is an offence to fail to comply with a requirement under this
9 subsection: see section 103.

- 10 (2) The requirement is made whether or not the person in charge of the
11 vessel understands or is aware of the requirement.

12 *Chasing*

- 13 (3) If the person in charge of a vessel does not comply with a
14 requirement to stop or facilitate boarding of the vessel, a maritime
15 officer may do one or more of the following:
16 (a) chase the vessel;
17 (b) use any reasonable means to obstruct the passage of the
18 vessel;
19 (c) use any reasonable means to halt or slow the passage of the
20 vessel, including by fouling the propellers of the vessel;
21 (d) after firing a warning shot, fire at or into the vessel to disable
22 it or compel it to be brought to for boarding.

23 *Requirement taken to be made to support vessels*

- 24 (4) A requirement made to a person in charge of a vessel (the
25 ***supported vessel***) to stop or facilitate boarding of the supported
26 vessel, is taken to have been made also to the person in charge of
27 any vessel supporting the supported vessel.

1 **55 Additional powers—aircraft**

2 *Identifying*

- 3 (1) A maritime officer may require the person in charge of an aircraft
4 to disclose any or all of the following to the officer:
5 (a) the identity of the aircraft;
6 (b) the identity of all persons on the aircraft;
7 (c) the flight path of the aircraft;
8 (d) the flight plan of the aircraft.

9 Note: It is an offence to fail to comply with a requirement under this
10 subsection: see section 103.

- 11 (2) The requirement may be made by any reasonable means.
12 (3) The requirement is made whether or not the person in charge of the
13 aircraft understands or is aware of the requirement.
14 (4) The powers in subsection (1) are *aircraft identification powers*.

15 *Intercepting*

- 16 (5) A maritime officer who is on board an aircraft may use his or her
17 aircraft to intercept another aircraft.
18 (6) The interception must be in accordance with the practices
19 recommended in Annex 2 (headed “Rules of the Air”) to the
20 Convention on International Civil Aviation done at Chicago on
21 7 December 1944 (that was adopted in accordance with that
22 Convention).

23 Note: The text of the Convention is set out in Australian Treaty Series 1957
24 No. 5 ([1957] ATS 5). 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).

27 *Landing*

- 28 (7) A maritime officer may require the person in charge of an aircraft
29 to land the aircraft:
30 (a) at the nearest airport in Australia; or

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1 (b) at another place in Australia that the officer considers
2 appropriate.

3 Note: It is an offence to fail to comply with a requirement under this
4 subsection: see section 103.

5 (8) A maritime officer must have regard to the safety of the aircraft
6 when making a requirement under subsection (7).
7

1 **Division 3—Entering on land**

2 **56 Entering on land**

- 3 (1) A maritime officer may enter onto land.
- 4 (2) If the person in charge of the land requests the officer to produce
5 identification, the officer must produce:
- 6 (a) the officer's identity card; or
7 (b) other written evidence of the fact that the officer is a
8 Commonwealth officer.
- 9 (3) If the officer fails to produce the identity card or other written
10 evidence, the officer must:
- 11 (a) leave the land; and
12 (b) not re-enter the land without producing the identity card or
13 other written evidence.
- 14 (4) Subsections (2) and (3) do not apply if the officer is one of the
15 following in uniform:
- 16 (a) a member of the Australian Defence Force;
17 (b) an officer of Customs (within the meaning of the *Customs*
18 *Act 1901*);
19 (c) a member or special member of the Australian Federal
20 Police;
21 (d) an officer prescribed by the regulations.

22 Note: The exercise of powers on land is limited: see the definition of
23 ***protected land area*** in section 8 and the geographical limits on the
24 exercise of powers set out in sections 46 and 47.
25

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1 **Division 4—Obtaining information**

2 **57 Requiring answers, records and documents**

3 (1) A maritime officer may require a person to answer questions or
4 produce records or documents.

5 Note: It is an offence to fail to comply with a requirement under this
6 subsection: see section 103.

7 (2) The questions, records or documents may be about, or relate to:

8 (a) a vessel, installation, aircraft or land; or

9 (b) the operations of a vessel, installation or aircraft, or activities
10 conducted on a vessel, installation, aircraft or land; or

11 (c) any thing on or in the vicinity of a vessel, installation, aircraft
12 or land (including stores and cargo); or

13 (d) the identity of the person or any other person; or

14 (e) the reasons for the person or any other person being on or in
15 the vicinity of a vessel, installation, aircraft or land; or

16 (f) any journey undertaken by the person or any other person; or

17 (g) any contravention, or suspected contravention, of an
18 Australian law.

19 (3) Subsection (2) does not limit subsection (1).

20 **58 Obtaining readings**

21 A maritime officer may read, make readings from, or require the
22 person in charge of a vessel, installation or aircraft to show the
23 officer readings of, navigational or other instruments that relate to
24 the operations of a vessel, installation or aircraft.

25 Note: It is an offence to fail to comply with a requirement under this section:
26 see section 103.
27

1 **Division 5—Searching**

2 **59 Searching places**

- 3 (1) A maritime officer may conduct a search, including a search of
4 private living quarters.

5 *Opening holds etc.*

- 6 (2) In conducting a search, a maritime officer may break open any
7 space (including a hold, compartment, container, receptacle or any
8 place that could be used as a receptacle).

- 9 (3) Before breaking open a space, a maritime officer must give the
10 person in charge of the vessel, installation, aircraft or land
11 concerned a reasonable opportunity to open the space.

- 12 (4) Subsection (3) does not apply if it is not reasonably practicable to
13 give the person such an opportunity.

14 *Use of dogs, equipment etc.*

- 15 (5) A maritime officer may use a dog or any equipment or other thing
16 to assist in a search.

17 **60 Lifting persons or things from the sea**

18 A maritime officer may cause a person or thing to be lifted from
19 the sea.

20 **61 Searching persons**

- 21 (1) A maritime officer may search a person.

- 22 (2) The search may be either or both of the following:

- 23 (a) an ordinary search;
24 (b) a frisk search.

- 25 (3) The officer may require the production of any thing found as a
26 result of the search.

Part 3 Maritime powers

Division 5 Searching

Section 62

1 Note: It is an offence to fail to comply with a requirement under this
2 subsection: see section 103.

3 *Meanings of ordinary search and frisk search*

- 4 (4) An *ordinary search* is a search of a person, or of articles in the
5 possession of a person, that may include:
6 (a) requiring the person to remove his or her overcoat, coat or
7 jacket and any gloves, shoes or hat; and
8 (b) an examination of those items.
- 9 (5) A *frisk search* is:
10 (a) a search of a person conducted by quickly running hands
11 over the person's outer garments; and
12 (b) an examination of anything worn or carried by the person
13 that is conveniently and voluntarily removed by the person.

14 **62 Conducting frisk searches**

- 15 (1) A frisk search must be conducted by a maritime officer or person
16 assisting who is of the same sex as the person being searched.

17 Note: For *person assisting*, see paragraph 38(5)(b).

- 18 (2) If the search is conducted by a person assisting, the search must be
19 conducted in the presence of a maritime officer.

- 20 (3) If:
21 (a) there is no maritime officer of the same sex available; and
22 (b) no other suitable person of the same sex will agree to assist;
23 any maritime officer may conduct the search.
24

1 **Division 6—Things found or produced**

2 **63 Examining things**

3 *Maritime officer may examine things*

- 4 (1) A maritime officer may examine a thing.

5 *Examples of examining*

- 6 (2) The officer may do the following:
- 7 (a) open any package in which the thing is or may be contained;
 - 8 (b) use a device, such as an X-ray machine or ion scanning
 - 9 equipment, on the thing;
 - 10 (c) test or analyse the thing;
 - 11 (d) measure or count the thing;
 - 12 (e) take samples of the thing (even if the sampling destroys the
 - 13 thing);
 - 14 (f) operate the thing;
 - 15 (g) if the thing is or contains a record or document—read the
 - 16 record or document either directly or with the use of an
 - 17 electronic device;
 - 18 (h) use a dog to assist in examining the thing;
 - 19 (i) take photographs or a video recording of the thing;
 - 20 (j) make sketches of the thing.

- 21 (3) Subsection (2) does not limit subsection (1).

22 *Use of force to examine*

- 23 (4) The officer may use force to open the thing, or any part of the
- 24 thing.
- 25 (5) However, before doing so, the officer must give a reasonable
- 26 opportunity to open the thing, or the part of the thing, to:
- 27 (a) the person in whose possession the thing was found; and
 - 28 (b) if the thing was found on a vessel, installation, aircraft or
 - 29 land—the person in charge of the vessel, installation, aircraft
 - 30 or land.

Section 64

- 1 (6) Subsection (5) does not apply if it is not reasonably practicable to
2 give such an opportunity.

3 **64 Securing and marking things**

- 4 (1) A maritime officer may do one or more of the following:
5 (a) seal a thing;
6 (b) mark a thing;
7 (c) lock up, or otherwise secure a thing (including in the hold of
8 a vessel or aircraft);
9 (d) if the thing is a live plant:
10 (i) mark or label a cage or container in which the plant is
11 kept or in which the plant is growing; or
12 (ii) place a label or tag on the plant;
13 (e) if the thing is a live animal:
14 (i) implant a scannable device in the animal; or
15 (ii) place a band on any part of the animal; or
16 (iii) place (whether by piercing or otherwise) a tag or ring on
17 any part of the animal; or
18 (iv) mark or label a cage or container within which the
19 animal is kept.

20 *Offences*

- 21 (2) A person commits an offence if:
22 (a) in the exercise of powers in relation to a vessel, installation,
23 aircraft or land, a maritime officer seals, marks, labels, locks
24 up or secures a thing; and
25 (b) the continuous exercise of those powers has not ceased; and
26 (c) the person:
27 (i) breaks or defaces the seal; or
28 (ii) erases or defaces the mark or label; or
29 (iii) breaks or unlocks the lock or otherwise causes the thing
30 to be unsecured; and
31 (d) the person does so without the consent of a maritime officer.

32 Penalty: 50 penalty units.

Section 65

1 Note: The continuous exercise of powers does not end only because there is
2 a period of time between the exercise of one or more of those powers:
3 see section 11.

- 4 (3) A person commits an offence if:
- 5 (a) in the exercise of powers in relation to a vessel, installation,
6 aircraft or land, a maritime officer:
 - 7 (i) implants a scannable device in an animal; or
 - 8 (ii) places a band on any part of an animal; or
 - 9 (iii) places (whether by piercing or otherwise) a tag or ring
10 on any part of an animal; and
 - 11 (b) the continuous exercise of those powers has not ceased; and
 - 12 (c) the person removes, or interferes with, the implant, band, tag
13 or ring; and
 - 14 (d) the person does so without the consent of a maritime officer.

15 Penalty: 50 penalty units.

16 Note: The continuous exercise of powers does not end only because there is
17 a period of time between the exercise of one or more of those powers:
18 see section 11.

19 **65 Copying records or documents**

20 A maritime officer may copy a record or document, or a part of a
21 record or document.

22 **66 Securing weapons**

- 23 (1) A maritime officer may secure a weapon.
- 24 (2) The officer may:
- 25 (a) take temporary possession of the weapon; or
 - 26 (b) give temporary possession of the weapon to another person;
27 or
 - 28 (c) move or guard the weapon; or
 - 29 (d) disarm or dismantle the weapon.
- 30 (3) Subsection (2) does not limit subsection (1).

31 Note: A weapon can be seized under section 67 (seizing things), and could
32 be retained under section 68 (retaining things).

Section 67

1 **67 Seizing things**

- 2 (1) A maritime officer may seize:
- 3 (a) a weapon; or
- 4 (b) any thing that the officer suspects, on reasonable grounds:
- 5 (i) is evidential material; or
- 6 (ii) is a border controlled drug or border controlled plant; or
- 7 (iii) is owned by the Commonwealth or a State or Territory.

8 Note: Written notice must be given if a thing is seized: see section 80.

- 9 (2) To avoid doubt, a thing owned by the Commonwealth or a State or
- 10 Territory includes a thing that has been forfeited to the
- 11 Commonwealth or the State or Territory.

- 12 (3) A thing seized under subsection (1) is a *seized thing*.

13 **68 Retaining things**

- 14 (1) A maritime officer may retain any thing that the officer suspects,
- 15 on reasonable grounds, could be seized under an Australian law.

16 Note: Written notice must be given if a thing is retained: see section 80.

- 17 (2) The officer may retain the thing even if a warrant would be
- 18 required to take possession of the thing under that law.

- 19 (3) A thing retained under subsection (1) is a *retained thing*.
- 20

1 **Division 7—Detaining vessels, aircraft and other**
2 **conveyances**

3 **69 Vessels and aircraft**

- 4 (1) A maritime officer may detain a vessel or aircraft.
- 5 (2) The officer may:
- 6 (a) take the vessel or aircraft, or cause the vessel or aircraft to be
7 taken, to a port, airport or other place that the officer
8 considers appropriate; and
- 9 (b) remain in control of the vessel or aircraft, or require the
10 person in charge of the vessel or aircraft to remain in control
11 of the vessel or aircraft, at that place until the vessel is
12 released or disposed of.

13 Note 1: Written notice must be given if a vessel or aircraft is detained: see
14 section 80.

15 Note 2: It is an offence to fail to comply with a requirement under
16 paragraph (b): see section 103.

- 17 (3) The officer may take the vessel or aircraft, or cause it to be taken,
18 to the port, airport or other place even if it is necessary for the
19 vessel or aircraft to travel outside Australia to reach the port,
20 airport or other place.
- 21 (4) A vessel detained under subsection (1) is a *detained vessel*.
- 22 (5) An aircraft detained under subsection (1) is a *detained aircraft*.

23 **70 Other conveyances**

24 A maritime officer may detain a vehicle or other conveyance on
25 land.
26

Section 71

1 **Division 8—Placing and moving persons**

2 **71 Placing persons**

3 A maritime officer exercising powers in relation to a vessel,
4 installation, aircraft or land may place or keep a person in a
5 particular place on the vessel, installation, aircraft or land.

6 Note 1: The exercise of powers under this Act must be for a purpose set out in
7 Division 4 of Part 2.

8 Note 2: A maritime officer must not subject a person to greater indignity than
9 is necessary and reasonable in the exercise of powers: see section 37.

10 Note 3: A person arrested, detained or otherwise held under this Act must be
11 treated with humanity and respect for human dignity, and must not be
12 subject to cruel, inhuman or degrading treatment: see section 95.

13 **72 Persons on detained vessels and aircraft**

14 (1) This section applies to a person:

15 (a) on a detained vessel or detained aircraft; or

16 (b) whom a maritime officer reasonably suspects was on a vessel
17 or aircraft when it was detained.

18 Note: For detaining vessels and aircraft, see section 69.

19 (2) A maritime officer may return the person to the vessel or aircraft.

20 (3) A maritime officer may require the person to remain on the vessel
21 or aircraft until it is:

22 (a) taken to a port, airport or other place (see section 69); or

23 (b) permitted to depart from the port, airport or other place.

24 Note: It is an offence to fail to comply with a requirement under this
25 subsection: see section 103.

26 (4) A maritime officer may detain the person and take the person, or
27 cause the person to be taken:

28 (a) to a place in the migration zone; or

29 (b) to a place outside the migration zone, including a place
30 outside Australia.

31 (5) For the purposes of taking the person to another place, a maritime
32 officer may within or outside Australia:

- 1 (a) place the person on a vessel or aircraft; or
2 (b) restrain the person on a vessel or aircraft; or
3 (c) remove the person from a vessel or aircraft.

4 **73 Using detention provisions**

- 5 (1) A maritime officer may detain a person under a detention provision
6 as if the officer were an officer (however described) within the
7 meaning of that provision.

8 Note: For dealing with a person who has been detained under a detention
9 provision, see section 98.

- 10 (2) Each of the following is a *detention provision*:
11 (a) clause 8 of Schedule 1 to the *Environment Protection and*
12 *Biodiversity Conservation Act 1999*;
13 (b) clause 8 of Schedule 1A to the *Fisheries Management Act*
14 *1991*;
15 (c) clause 8 of Schedule 2 to the *Torres Strait Fisheries Act*
16 *1984*;
17 (d) a provision prescribed by the regulations.

18 **74 Safety of persons**

19 A maritime officer must not place or keep a person in a place,
20 unless the officer is satisfied, on reasonable grounds, that it is safe
21 for the person to be in that place.

22 **75 Restraint is not arrest**

- 23 (1) Any restraint on the liberty of a person that results from the
24 operation of this Division does not constitute arrest, and is not
25 unlawful.
26 (2) Proceedings, whether civil or criminal, in respect of that restraint
27 may not be instituted or continued in any court against the
28 Commonwealth, a maritime officer or a person assisting.

29 Note: This section does not affect the jurisdiction of the High Court under
30 section 75 of the Constitution.
31

1 **Division 9—Arrest**

2 **76 Arrest for indictable offences**

3 (1) A maritime officer may arrest a person if the officer suspects, on
4 reasonable grounds, that the person has committed an indictable
5 offence against an Australian law.

6 Note: For dealing with a person who has been arrested, see section 100.

7 *Release from arrest*

8 (2) The person must be released from arrest if, before the person is
9 charged with the offence, the officer ceases to suspect, on
10 reasonable grounds, that the person committed the offence.

11 **77 Enforcing arrest warrants**

12 A maritime officer may arrest a person for whom an arrest warrant
13 is in force under an Australian law.

14 Note: For dealing with a person who has been arrested, see section 100.

15

1 **Division 10—Requiring conduct to cease**

2 **78 Requiring conduct to cease**

3 A maritime officer may require a person to cease conduct if the
4 officer believes, on reasonable grounds, that the conduct
5 constitutes a contravention of an Australian law.

6 Note: It is an offence to fail to comply with a requirement under this section:
7 see section 103.
8

1 **Part 4—Dealing with things taken**

2 **Division 1—Introduction**

3 **79 Guide to this Part**

4 This Part sets out processes for dealing with things taken in the
5 exercise of powers under this Act.

6 Things taken fall into the following 3 categories:

- 7 (a) seized things;
- 8 (b) retained things;
- 9 (c) detained vessels and aircraft.

10 Written notice must be given to the owner or person who was in
11 possession or control of a seized, retained or detained thing.

12 Seized things may be used for certain purposes, but must be
13 returned unless:

- 14 (a) they are required for proceedings; or
- 15 (b) they have been disposed of under an Australian
16 law; or
- 17 (c) they are seized under another Australian law; or
- 18 (d) the Commonwealth claims ownership of them.

19 Retained and detained things must be returned unless:

- 20 (a) they have been disposed of under an Australian
21 law; or
- 22 (b) they are seized under an Australian law; or

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(c) the Commonwealth claims ownership of them.

The Minister may dispose of seized, retained and detained things on the grounds set out in Division 5.

If the Commonwealth claims ownership of a seized, retained or detained thing, a person may apply to a court for its return.

Section 80

1 **Division 2—Notice of seizure, retention or detention**

2 **80 Notice of seizure, retention or detention**

3 (1) If a maritime officer seizes or retains a thing, or detains a vessel or
4 aircraft (also the *thing*), the officer must give written notice, within
5 14 days, to:

- 6 (a) the owner of the thing; or
7 (b) the person who had possession or control of the thing
8 immediately before it was seized, retained or detained.

9 Note: Things may be seized under section 67 and retained under section 68.
10 Vessels and aircraft may be detained under section 69.

11 (2) If the officer cannot conveniently give the notice in person, the
12 officer may give the notice by fixing the notice to a prominent part
13 of the thing, unless the thing is perishable.

14 (3) The notice must:

- 15 (a) identify the thing; and
16 (b) state that the thing has been seized, retained or detained; and
17 (c) specify the reason for this; and
18 (d) specify contact details of an officer who can provide further
19 information; and
20 (e) include information about the return of the thing.

21 **81 Information about the return of things**

22 *Seized things*

23 (1) Information about the return of a seized thing must state that the
24 thing will be returned within 120 days of its seizure unless:

- 25 (a) the thing is required for the purposes of proceedings that
26 have been instituted, or an appeal arising from such
27 proceedings; or
28 (b) the period of 120 days is extended by a magistrate under
29 section 88; or
30 (c) the thing is disposed of under an Australian law; or
31 (d) the thing is seized under another Australian law; or

1 (e) notice of Commonwealth ownership of the thing is given.

2 *Retained things and detained vessels and aircraft*

3 (2) Information about the return of a retained thing, or a detained
4 vessel or detained aircraft (also the *thing*), must state that the thing
5 will be returned within 28 days of its retention or detention unless:

6 (a) the period of 28 days is extended by a magistrate under
7 section 88; or

8 (b) the thing is disposed of under an Australian law; or

9 (c) the thing is seized under an Australian law; or

10 (d) notice of Commonwealth ownership of the thing is given.

11 **82 Notice of Commonwealth ownership**

12 (1) Notice of Commonwealth ownership of a thing may be given at
13 any time.

14 (2) The notice must:

15 (a) state that the Commonwealth claims ownership of the thing;
16 and

17 (b) state that any other person who claims ownership or
18 possession of the thing may apply to a court of competent
19 jurisdiction, within 30 days after the notice is given, for an
20 order for the return of the thing.

21 (3) If the notice cannot conveniently be given in person, the officer
22 may give the notice by fixing the notice to a prominent part of the
23 thing, unless the thing is perishable.
24

1 **Division 3—Using seized things**

2 **83 Using seized things**

- 3 (1) A maritime officer may use a seized thing, or make a seized thing
4 available to another Commonwealth officer to use as follows:
- 5 (a) to prevent, investigate or prosecute a contravention of:
 - 6 (i) an Australian law; or
 - 7 (ii) an international agreement or international decision;
 - 8 (b) to administer or ensure compliance with:
 - 9 (i) a monitoring law; or
 - 10 (ii) an international agreement or international decision;
 - 11 (c) for any other purpose under another Australian law, as if the
12 thing had been seized, produced or required (however
13 described) under that law;
 - 14 (d) to decide whether to use the thing as mentioned in any of
15 paragraphs (a) to (c).

- 16 (2) To avoid doubt, paragraph (1)(c) applies even if a warrant would
17 have been required to seize or access the thing under that law.

18 Note: The thing will have to be returned in accordance with section 86,
19 unless an exception under subsection 86(3) applies.

20 **84 Using seized things—State and Territory officers**

21 A Commonwealth officer may make a seized thing available to an
22 officer of a State or Territory to be:

- 23 (a) seized under a law of the State or Territory; or
- 24 (b) used for any other purpose under a law of the State or
25 Territory.

26 Note: The thing will have to be returned in accordance with section 86,
27 unless an exception under subsection 86(3) applies.

28 **85 Operating electronic equipment**

29 If:

- 30 (a) a seized thing may be used under this Division for a
31 particular purpose; and

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(b) the thing is electronic equipment;
the thing may be operated for that purpose.

1 **Division 4—Returning things**

2 **86 Returning seized things**

3 (1) If a seized thing is no longer required for a purpose mentioned in
4 Division 3 (using seized things), the person who has control of the
5 thing must take reasonable steps to return the thing to:

- 6 (a) the owner of the thing; or
7 (b) the person who had possession or control of the thing
8 immediately before it was seized.

9 (2) The thing must be returned within:

- 10 (a) 120 days after it is seized; or
11 (b) that period as extended under section 88.

12 (3) Subsections (1) and (2) do not apply if:

- 13 (a) the thing is required for the purposes of proceedings that
14 have been instituted, or an appeal arising from such
15 proceedings; or
16 (b) the thing has been disposed of under an Australian law; or
17 (c) the thing has been seized under another Australian law; or
18 (d) notice of Commonwealth ownership of the thing has been
19 given.

20 **87 Returning retained and detained things**

21 (1) A retained thing, or a detained vessel or detained aircraft (also the
22 *thing*), must be returned to:

- 23 (a) the owner of the thing; or
24 (b) the person who had possession or control of the thing
25 immediately before it was retained or detained.

26 (2) The thing must be returned within:

- 27 (a) 28 days after it is retained or detained; or
28 (b) that period as extended under section 88.

29 (3) Subsections (1) and (2) do not apply if:

- 30 (a) the thing has been disposed of under an Australian law; or
31 (b) the thing has been seized under an Australian law; or

- 1 (c) notice of Commonwealth ownership of the thing has been
2 given.

3 **88 Magistrate may extend holding period**

- 4 (1) The person who has control of a seized thing or retained thing, or a
5 detained vessel or detained aircraft (also the *thing*), may apply to a
6 magistrate for an order extending, or further extending, the period
7 for which the thing may be held.
- 8 (2) The magistrate may make an order extending the period for which
9 the thing may be held if the magistrate is satisfied that:
- 10 (a) the thing is required for a purpose mentioned in Division 3
11 (using seized things); or
12 (b) there are other grounds for extending the period.
- 13 (3) Before making the application, the person who has control of the
14 thing must:
- 15 (a) take reasonable steps to discover who has an interest in the
16 thing; and
17 (b) if it is practicable to do so, notify each such person of the
18 proposed application.

19 **89 Returning things if notice of Commonwealth ownership given**

20 *Application to court*

- 21 (1) If notice of Commonwealth ownership of a thing is given, a person
22 who claims ownership or possession of the thing may apply to a
23 court of competent jurisdiction for an order for the return of the
24 thing.
- 25 (2) The application must be made within 30 days after the notice of
26 Commonwealth ownership is given.

27 *Order for return of thing*

- 28 (3) The court may order the return of the thing if:
29 (a) the court is not satisfied that the Commonwealth owns the
30 thing; and

Part 4 Dealing with things taken

Division 4 Returning things

Section 90

- 1 (b) the thing has not been:
2 (i) seized under another Australian law; or
3 (ii) disposed of under an Australian law.

4 **90 Seizing under other Australian laws**

- 5 (1) If a seized thing is seized under another Australian law, its seizure
6 under this Act does not:
7 (a) count as seizure under the other law; or
8 (b) remove or fulfil any requirement under the other law to:
9 (i) give notice or information; or
10 (ii) act under a warrant; or
11 (iii) do any other thing in relation to the seizure under the
12 other law.
- 13 (2) If a retained thing, or a detained vessel or detained aircraft (also the
14 **thing**), is seized under an Australian law (the **other law**), its
15 retention or detention under this Act does not:
16 (a) count as seizure under the other law; or
17 (b) remove or fulfil any requirement under the other law to:
18 (i) give notice or information; or
19 (ii) act under a warrant; or
20 (iii) do any other thing in relation to the seizure under the
21 other law.
- 22 (3) Subsections (1) and (2) have effect subject to any express provision
23 to the contrary in an Australian law.
24

1 **Division 5—Disposing of things**

2 **91 Reasons for disposal**

- 3 (1) The Minister may dispose of a seized thing or retained thing, or a
4 detained vessel or detained aircraft (also the *thing*), if:
- 5 (a) custody or maintenance (including any necessary movement
6 or transport) of the thing creates serious difficulties; or
 - 7 (b) the expenses of custody or maintenance (including any
8 necessary movement or transport) of the thing are likely to
9 exceed its value; or
 - 10 (c) the thing is a live plant or animal and its return to its native
11 environment would be beneficial to its survival; or
 - 12 (d) if notice of Commonwealth ownership of the thing has been
13 given:
 - 14 (i) an application for an order for the return of the thing has
15 not been made within the time allowed under
16 section 89; or
 - 17 (ii) proceedings in relation to such an application have been
18 finally determined without an order for the return of the
19 thing being made.
- 20 (2) For the purposes of paragraph (1)(a), the custody or maintenance
21 of the thing is taken to create serious difficulties if:
- 22 (a) the thing is perishable; or
 - 23 (b) storage of the thing would be impractical; or
 - 24 (c) the thing poses a serious risk to navigation, quarantine, safety
25 or public health; or
 - 26 (d) the thing poses a serious risk of damage to property or the
27 environment; or
 - 28 (e) if the thing is a vessel—it is unseaworthy; or
 - 29 (f) despite reasonable efforts, it has not been possible to return
30 the thing.
- 31 (3) Subsection (2) does not limit paragraph (1)(a).

Section 92

1 **92 Methods of disposal**

- 2 (1) The thing may be:
- 3 (a) sold; or
- 4 (b) destroyed; or
- 5 (c) if the thing is a live plant or animal—returned to its native
- 6 environment; or
- 7 (d) disposed of in any other way.
- 8 (2) The regulations may prescribe the way in which a thing prescribed
- 9 by the regulations must be disposed of.

10 **93 Notice of disposal**

- 11 (1) If the thing is disposed of under paragraph 91(1)(a), (b) or (c)
- 12 (reasons for disposal), the Minister must give written notice, as
- 13 soon as practicable after the disposal, to the person who:
- 14 (a) owned the thing; or
- 15 (b) had possession or control of the thing immediately before it
- 16 was seized, retained or detained.
- 17 (2) The notice must state:
- 18 (a) that the thing has been disposed of; and
- 19 (b) the reason for the disposal; and
- 20 (c) that compensation may be payable under section 117.
- 21 Note: A person may be paid compensation under section 117 if the disposal
- 22 of the thing results in an acquisition of property otherwise than on just
- 23 terms.
- 24 (3) Subsection (1) does not apply if, despite making reasonable efforts,
- 25 the Minister cannot locate the person.
- 26

1 **Part 5—Dealing with persons held**

2 **Division 1—Introduction**

3 **94 Guide to this Part**

4 This Part sets out requirements for dealing with persons held in the
5 exercise of powers under this Act.

6 Persons arrested, detained or otherwise held:

- 7 (a) must not be subject to greater indignity than is
8 necessary and reasonable (see section 37); and
- 9 (b) must be treated with humanity and respect for
10 human dignity, and must not be subject to cruel,
11 inhuman or degrading treatment (see section 95).

12 Persons from detained vessels and aircraft may be required to
13 remain on the vessel or aircraft, or may be taken to another place.

14 Persons detained under provisions of other Acts must be dealt with
15 under those Acts.

16 Persons arrested must, as soon as practicable, be:

- 17 (a) taken before a magistrate; or
- 18 (b) delivered to a police officer or other appropriate
19 person.

20 **95 Treatment of persons held**

21 A person arrested, detained or otherwise held under this Act must
22 be treated with humanity and respect for human dignity, and must
23 not be subject to cruel, inhuman or degrading treatment.

Section 96

1 **96 Doing things as soon as practicable**

2 The following are to be taken into account in determining whether
3 a maritime officer has done something as soon as practicable under
4 this Part:

5 (a) the location of the place where a person is arrested or
6 detained;

7 (b) the weather conditions at the time;

8 (c) the means of transport available;

9 (d) the need to proceed or continue with the exercise of powers
10 under this Act;

11 (e) the need to ensure the safety of a vessel, installation or
12 aircraft;

13 (f) the need to take action to:

14 (i) protect human life, animal life or the environment; or

15 (ii) aid a vessel in distress; or

16 (iii) obtain medical assistance for any person.
17

1 **Division 2—Persons detained**

2 **97 Persons on, or from, detained vessels or aircraft taken to other**
3 **places**

4 (1) If a person is detained and taken to another place under subsection
5 72(4) (persons on detained vessels and aircraft), the detention ends
6 at that place.

7 (2) Subsection (1) does not prevent:

8 (a) the person being taken to different places on the way to the
9 other place; or

10 (b) the arrest of the person; or

11 (c) the detention of the person under another Australian law; or

12 (d) the exercise of any other power in relation to the person.

13 **98 Persons detained under detention provisions**

14 *Person must be delivered into custody*

15 (1) If a maritime officer detains a person under a detention provision,
16 the officer must deliver the person, or make arrangements for the
17 person to be delivered, as soon as practicable, into the custody of
18 an officer (however described) within the meaning of the detention
19 provision.

20 Note: For detention under detention provisions, see section 73.

21 *How detention law applies*

22 (2) The Act in which the detention provision is contained has effect as
23 if the officer to whom the person is delivered had detained the
24 person at the time when the person is delivered into the officer's
25 custody.
26

1 **Division 3—Persons arrested**

2 **99 Application of this Division**

3 This Division applies to a person arrested under this Act.

4 **100 Person to be informed of reason for arrest**

5 (1) A maritime officer must inform the person, at the time of the arrest,
6 of the offence for which the person is being arrested.

7 Note: For arrest powers, see sections 76 and 77.

8 (2) It is sufficient if the person is informed of the substance of the
9 offence, and it is not necessary that this be done in language of a
10 precise or technical nature.

11 *Person need not be informed if impracticable etc.*

12 (3) Subsection (1) does not apply if:

- 13 (a) the person should, in the circumstances, know the substance
14 of the offence for which he or she is being arrested; or
15 (b) the person's actions make it impracticable for the officer to
16 inform the person of the offence for which he or she is being
17 arrested; or
18 (c) the officer believes on reasonable grounds that the person
19 does not speak English and it is not practicable for the officer
20 to inform the person, in a language he or she understands, of
21 the offence for which he or she is being arrested.

22 **101 Person to be brought before magistrate**

23 The officer must:

- 24 (a) take the person, or make arrangements for the person to be
25 taken, as soon as practicable, before a magistrate; or
26 (b) deliver the person, or make arrangements for the person to be
27 delivered, on land, as soon as practicable, to:
28 (i) the Australian Federal Police; or
29 (ii) the police force of a State or Territory; or

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- 1 (iii) if the arrest relates to an offence against another law—a
2 person with the power to arrest, or the power to deal
3 with a person who has been arrested, under that law.

4 **102 Enforcing arrest warrants**

5 If the person is arrested for the purposes of enforcing an arrest
6 warrant that is in force under an Australian law (see section 77),
7 the arresting officer:

- 8 (a) must, as soon as practicable, comply with any requirements
9 in the warrant that would have to be complied with by a
10 person executing the warrant; and
11 (b) need not comply with section 101 (person to be brought
12 before magistrate) to the extent that it is inconsistent with any
13 such requirements.
14

Section 103

Part 6—Failing to comply with requirements

103 Offence

A person commits an offence if:

- (a) a requirement is made under a provision mentioned in the table below; and
- (b) the person engages in conduct; and
- (c) the result of the conduct is that the requirement is not complied with.

Penalties

Item	If the requirement is made under ...	The penalty is ...
1	Subsection 39(1) (requirement to assist)	Imprisonment for 2 years or 120 penalty units, or both
2	Subsection 53(1) (requirement to facilitate boarding)	Imprisonment for 2 years or 120 penalty units, or both
3	Subsection 54(1) (additional powers—vessels)	Imprisonment for 2 years or 120 penalty units, or both
4	Subsection 55(1) (additional powers—aircraft)	Imprisonment for 2 years or 120 penalty units, or both
5	Subsection 55(7) (additional powers—aircraft)	Imprisonment for 2 years or 120 penalty units, or both
6	Subsection 57(1) (requiring answers, records and documents)	Imprisonment for 2 years or 120 penalty units, or both
7	Section 58 (obtaining readings)	Imprisonment for 2 years or 120 penalty units, or both
8	Subsection 61(3) (searching persons)	Imprisonment for 2 years or 120 penalty units, or both
9	Paragraph 69(2)(b) (detaining vessels and aircraft)	Imprisonment for 2 years or 120 penalty units, or both
10	Subsection 72(3) (persons on detained vessels and aircraft)	Imprisonment for 2 years or 120 penalty units, or both
11	Section 78 (requirement to cease conduct)	Imprisonment for 2 years or 120 penalty units, or both

1 **Part 7—Miscellaneous**

2 **Division 1—Maritime officers**

3 **104 Maritime officers**

- 4 (1) Each of the following is a *maritime officer*:
- 5 (a) a member of the Australian Defence Force;
- 6 (b) an officer of Customs (within the meaning of the *Customs*
- 7 *Act 1901*);
- 8 (c) a member or special member of the Australian Federal
- 9 Police;
- 10 (d) a person appointed as a maritime officer by the Minister.

11 *Limited appointments*

- 12 (2) The Minister may appoint a person under paragraph (1)(d) as a
- 13 maritime officer:
- 14 (a) in relation to one or more of the following only:
- 15 (i) a specified law;
- 16 (ii) a specified international agreement or international
- 17 decision; and
- 18 (b) subject to any other conditions specified in the appointment.
- 19 (3) The appointment may limit the exercise of powers by the person as
- 20 a maritime officer.
- 21 (4) Subsection (3) does not limit paragraph (2)(b).

22 **105 Carrying and using arms**

- 23 (1) A maritime officer who is authorised in another capacity as an
- 24 officer (however described) of the Commonwealth or a State or
- 25 Territory to carry and use arms may carry and use arms as a
- 26 maritime officer.
- 27 (2) Any conditions applying to the carriage or use of arms by the
- 28 officer in the officer's other capacity apply in like manner to the
- 29 carriage and use of arms by the officer as a maritime officer.

Section 106

1 **106 Identity cards**

- 2 (1) The Minister may issue an identity card to a maritime officer.
- 3 (2) The identity card must:
- 4 (a) contain a recent photograph of the officer; and
- 5 (b) be in a form approved in writing by the Minister.
- 6 (3) A person commits an offence if:
- 7 (a) the person has been issued with an identity card under
- 8 subsection (1); and
- 9 (b) the person ceases to be a maritime officer; and
- 10 (c) the person does not immediately return the identity card to
- 11 the Minister or a person nominated by the Minister.
- 12 Penalty: 1 penalty unit.

13 **107 Protection from suit**

- 14 None of the following is liable to an action, suit or proceeding for
- 15 or in relation to an act done, or omitted to be done, in good faith in
- 16 the exercise or performance, or the purported exercise or
- 17 performance, of a power or function under this Act:
- 18 (a) an authorising officer;
- 19 (b) a maritime officer;
- 20 (c) a person assisting;
- 21 (d) any other person acting under the direction or authority of a
- 22 maritime officer.
- 23 Note: For *person assisting*, see subsection 38(5).
- 24

1 **Division 2—Evidentiary certificates**

2 **108 Evidence of international agreements and decisions**

3 The Foreign Affairs Minister may, by signed writing, certify that,
4 at a particular time, an international agreement or international
5 decision provided for the exercise of powers by Australia in
6 relation to a particular vessel, installation or aircraft.

7 Note: Certificates under this section relate to requirements set out in
8 paragraph 12(a).

9 **109 Evidence of approvals**

10 The Minister may, by signed writing, certify that the Minister had,
11 at a particular time, approved without writing one or more of the
12 following:

- 13 (a) the exercise of maritime powers in relation to a particular
14 aircraft for the purposes of investigating a particular
15 contravention, or contraventions in general;
- 16 (b) the exercise of powers under a particular international
17 agreement or international decision in relation to a particular
18 vessel, installation or aircraft.

19 Note: Certificates under this section relate to requirements set out in
20 paragraph 10(b) and subparagraph 12(b)(ii).

21 **110 Evidence of requests and agreements—geographical limits on**
22 **exercise of powers**

23 The Foreign Affairs Minister may, by signed writing, certify:

- 24 (a) that a particular country requested or agreed to the exercise
25 of powers as required by a provision of Division 5 of Part 2
26 (geographical limits); and
27 (b) the conditions or restrictions (if any) on which the request or
28 agreement was made or given.

29 **111 Certificates are prima facie evidence**

30 For all purposes and in all proceedings, a certificate under this
31 Division is prima facie evidence of the matters certified.

Section 112

1 **Division 3—Recovery of costs**

2 **112 Chase costs**

- 3 (1) This section applies if a maritime officer chases a vessel under
4 subsection 54(3).
- 5 (2) The owner of the vessel or, if the vessel is owned by the
6 Commonwealth or a State or Territory, any person who purports to
7 own the vessel is liable to pay to the Commonwealth an amount
8 equal to the reasonable costs incurred by the Commonwealth in
9 conducting the chase.
- 10 (3) If the vessel has more than one owner or purported owner, the
11 owners or purported owners are jointly and severally liable.

12 **113 Seizure costs**

- 13 (1) This section applies if:
14 (a) notice of Commonwealth ownership of a thing is given; and
15 (b) an application for an order for the return of the thing is made
16 under section 89; and
17 (c) proceedings in relation to the application have been finally
18 determined without such an order being made.
- 19 (2) The person who made the application is liable to pay to the
20 Commonwealth an amount equal to the sum of the costs reasonably
21 incurred by the Commonwealth in relation to the following:
22 (a) the custody of the thing;
23 (b) the maintenance of the thing;
24 (c) transport of the thing;
25 (d) the costs of disposal of the thing.
- 26 (3) However, subsection (2) does not apply in relation to any costs:
27 (a) met by the person who made the application; and
28 (b) incurred with the agreement of the Commonwealth officer
29 who has control of the thing.

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- 1 (4) For the purposes of meeting such costs, the thing may be released
2 into the custody of the person on such conditions as the
3 Commonwealth officer thinks appropriate.

4 **114 Liability to pay costs is a debt to the Commonwealth**

- 5 (1) An amount payable by a person under this Division is a debt due
6 by the person to the Commonwealth.
- 7 (2) The amount may be recovered by action in a court of competent
8 jurisdiction.
- 9 (3) The Commonwealth's right to recover the whole or a part of the
10 amount may be waived by:
- 11 (a) the Chief Executive Officer of Customs; or
12 (b) the Secretary of the Department administered by the Minister
13 who administers the *Naval Defence Act 1910*.
14

1 **Division 4—Gathering and sharing information**

2 **115 Copying records or documents for other purposes**

3 A maritime officer may copy a record or document, or a part of a
4 record or document, found or produced in the exercise of powers
5 under this Act if the officer is satisfied, on reasonable grounds, that
6 the record or document may contain information relevant to:

- 7 (a) security (within the meaning of section 4 of the *Australian*
8 *Security Intelligence Organisation Act 1979*); or
9 (b) the performance of functions under section 17 of the
10 *Australian Security Intelligence Organisation Act 1979*; or
11 (c) the performance of functions under section 6 of the
12 *Intelligence Services Act 2001*.

13 **116 Sharing information**

14 (1) A maritime officer may give information, a record or document, or
15 a copy of a record or document, obtained in the exercise of powers
16 under this Act (the **maritime information**) to a cooperating agency
17 for use by that agency in relation to:

- 18 (a) matters concerning maritime security, maritime safety or
19 maritime domain awareness; or
20 (b) the exercise of the functions or powers of the agency.

21 (2) The maritime information may be or include personal information.

22 Note: The use or disclosure of personal information obtained under this
23 section is regulated under the *Privacy Act 1988*.

24 (3) A maritime officer who is an officer (however described) of the
25 Commonwealth in another capacity may disclose or provide
26 maritime information as if the maritime information had been
27 obtained by the officer in that other capacity.

28 (4) Each of the following is a **cooperating agency**:

- 29 (a) the Australian Defence Force;
30 (b) the Australian Federal Police;
31 (c) the police force of a State or Territory;

- 1 (d) any other agency of the Commonwealth, or a State or
2 Territory, responsible for:
3 (i) investigating contraventions of laws; or
4 (ii) administering or ensuring compliance with laws; or
5 (iii) gathering or evaluating intelligence; or
6 (iv) security; or
7 (v) defence;
8 (e) an international body responsible for:
9 (i) investigating contraventions of international agreements
10 or international decisions; or
11 (ii) administering or ensuring compliance with international
12 agreements or international decisions;
13 (f) any other body or agency prescribed by the regulations.
14

1 **Division 5—Compensation for acquisition of property**

2 **117 Compensation for acquisition of property**

3 (1) If the operation of this Act would result in an acquisition of
4 property from a person otherwise than on just terms, the
5 Commonwealth is liable to pay a reasonable amount of
6 compensation to the person.

7 (2) In this section:

8 *acquisition of property* has the same meaning as in paragraph
9 51(xxxi) of the Constitution.

10 *just terms* has the same meaning as in paragraph 51(xxxi) of the
11 Constitution.

12 **118 Compensation for damage to documents**

13 (1) This section applies if:

14 (a) as a result of the exercise of powers under this Act, a
15 document is lost, destroyed or damaged; and

16 (b) the loss, destruction or damage occurred wholly or partly as a
17 result of:

18 (i) insufficient care being taken in selecting the person to
19 exercise the powers; or

20 (ii) insufficient care being taken by the person exercising
21 the powers.

22 (2) The Commonwealth is liable to pay the owner of the document a
23 reasonable amount of compensation.

24 **119 Compensation for damage to equipment**

25 (1) This section applies if:

26 (a) as a result of equipment being operated in the exercise of
27 powers under this Act:

28 (i) damage is caused to the equipment; or

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- 1 (ii) damage is caused to any data recorded on the equipment
2 or data access to which was obtained from the operation
3 of the equipment; or
4 (iii) programs associated with the use of the equipment, or
5 with the use of the data, are damaged or corrupted; and
6 (b) the damage or corruption occurs because:
7 (i) insufficient care was exercised in selecting the person
8 who was to operate the equipment; or
9 (ii) insufficient care was exercised by the person operating
10 the equipment.
- 11 (2) The Commonwealth is liable to pay the owner of the equipment, or
12 the user of the data or programs, a reasonable amount of
13 compensation.
- 14 (3) If the equipment was moved or seized, then, in determining the
15 amount of compensation payable, regard is to be had to whether a
16 person responsible for the equipment at the time provided any
17 appropriate warning or guidance on the operation of the equipment.
- 18 (4) In this section:
19 *damage*, in relation to data, includes damage by erasure of data or
20 addition of other data.

21 **120 Amount of compensation—proceedings**

22 If the Commonwealth does not agree with a person on the amount
23 of the compensation to be paid under this Division, the person may
24 institute proceedings in a court of competent jurisdiction for the
25 recovery from the Commonwealth of such reasonable amount of
26 compensation as the court determines.
27

1 **Division 6—Delegation and regulations**

2 **121 Delegation**

- 3 (1) The Minister may, by writing, delegate any or all of his or her
4 functions and powers under this Act to:
- 5 (a) the Chief of the Defence Force, the Chief of Navy, the Chief
6 of Army or the Chief of Air Force; or
 - 7 (b) the Commissioner or a Deputy Commissioner of the
8 Australian Federal Police; or
 - 9 (c) an Agency Head (within the meaning of the *Public Service*
10 *Act 1999*); or
 - 11 (d) an officer of the Australian Navy who holds a rank not below
12 Commodore; or
 - 13 (e) an officer of the Australian Army who holds a rank not below
14 Brigadier; or
 - 15 (f) an officer of the Australian Air Force who holds a rank not
16 below Air Commodore; or
 - 17 (g) an SES employee with a classification not below Senior
18 Executive Band 1 or equivalent.
- 19 (2) In exercising functions or powers delegated under subsection (1),
20 the delegate must comply with any directions of the Minister.

21 **122 Regulations**

- 22 The Governor-General may make regulations prescribing matters:
- 23 (a) required or permitted by this Act to be prescribed; or
 - 24 (b) necessary or convenient to be prescribed for carrying out or
25 giving effect to this Act.