



# **Transport Operations (Marine Safety) Act 1994**

**Current as at 1 December 2012**

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This Act is reprinted as at 1 December 2012. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about when provisions commenced.**

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Queensland

# Transport Operations (Marine Safety) Act 1994

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# Transport Operations (Marine Safety) Act 1994

[as amended by all amendments that commenced on or before 1 December 2012]

## An Act about marine safety and other matters

### Part 1 Preliminary

#### Division 1 Introduction

##### 1 Short title

This Act may be cited as the *Transport Operations (Marine Safety) Act 1994*.

#### Division 2 Objectives of Act

##### 3 Objectives of this Act

- (1) The overall primary objective of this Act is, consistent with the objectives of the *Transport Planning and Coordination Act 1994*, to provide a system that achieves an appropriate balance between—
  - (a) regulating the maritime industry to ensure marine safety; and
  - (b) enabling the effectiveness and efficiency of the Queensland maritime industry to be further developed.
- (2) In particular, the objectives of this Act are—
  - (a) to allow the Government to have a strategic overview of marine safety and related marine operational issues; and

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- (b) to establish a system under which—
  - (i) marine safety and related marine operational issues can be effectively planned and efficiently managed; and
  - (ii) influence can be exercised over marine safety and related marine operational issues in a way that contributes to overall transport efficiency; and
  - (iii) account is taken of the need to provide adequate levels of safety with an appropriate balance between safety and cost.
- (3) These objectives are to be achieved mainly by imposing general safety obligations to ensure seaworthiness and other aspects of marine safety, and allowing a general safety obligation to be discharged by complying with relevant standards or in other appropriate ways chosen by the person on whom the obligation is imposed.
- (4) In particular, a ship may be taken to sufficiently comply with the general safety obligation even though a certificate of survey has not been issued for the ship.
- (5) A further objective of this Act is to manage the operation and activities of ships.
- (6) The objectives of the Act, and how they are achieved, are further explained in part 3 (How to understand this Act).

## **Division 3 Interpretation and basic concepts**

### **4 Dictionary**

The dictionary in the schedule defines particular words used in this Act.

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## 5 Meaning of *certificate of compliance*

- (1) A *certificate of compliance* for a ship is a certificate issued for the ship, or a part of the ship, under a regulation by an accredited ship designer, ship builder or marine surveyor.
- (2) A certificate of compliance issued for a ship, or a part of a ship, by an accredited ship designer, ship builder or marine surveyor must include a declaration to the effect of the appropriate declaration prescribed by regulation about the ship's seaworthiness.
- (3) A regulation may require or permit a certificate of compliance issued for a ship, or a part of a ship, to deal with other issues about the ship's condition that affects marine safety, including, for example, a declaration about compliance with specified standards and specified provisions of specified standards.

## 6 Meaning of ship *connected with Queensland*

A ship is *connected with Queensland* if—

- (a) it is registered under the *Shipping Registration Act 1981* (Cwlth) with a home port in Queensland; or
- (b) it is, or is required to be, registered or licensed under this or another Act; or
- (c) it is owned or chartered by—
  - (i) an individual whose place of residence, or principal place of residence, is in Queensland; or
  - (ii) a person whose place of business, or principal place of business, is in Queensland; or
  - (iii) a person whose principal place of business for managing the ship's operations is in Queensland; or
- (d) it is a ship declared by regulation to be a ship connected with Queensland.

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## **7 Meaning of *master***

- (1) The master of a ship is the person having command or charge of the ship.
- (2) A pilot having the conduct of a ship, but not belonging to the ship, is not the master of the ship.

## **8 Meaning of *operates a ship***

An owner of a ship *operates* the ship if the owner operates the ship or causes or allows it to be operated by someone else.

## **9 Meaning of *owner***

- (1) The *owner* of a ship is the person who owns the ship, whether or not the person is registered as the ship's owner.
- (2) The *owner* of a ship includes a person who—
  - (a) exercises, or purports to exercise, powers of the owner; and
  - (b) operates the ship or causes or allows it to be operated by someone else.

*Example 1—*

If a ship's owner lives outside Queensland, and the owner appoints an agent in Queensland to exercise the owner's powers and operate the ship, the agent is an owner of the ship.

*Example 2—*

If, under a charter, a person has exclusive possession of a ship and may operate the ship, the person is an owner of the ship.

*Example 3—*

If a bank becomes the mortgagee in possession of a ship and operates it, the bank is an owner of the ship.

## **10 Meaning of *ship***

- (1) A *ship* is any kind of boat or other vessel used, or intended to be used, in navigation by water or for any other purpose on water.

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- (2) Without limiting subsection (1), a *ship* includes a boat or other vessel—
    - (a) whatever its size; and
    - (b) however it is propelled or moved; and
    - (c) whether it is on land or in water.
  - (3) A *ship* includes, for example—
    - (a) a barge, lighter or other floating vessel; and
    - (b) a hovercraft or other surface effect craft.
  - (4) A *ship* does not include a vessel declared by regulation not to be a ship.
  - (5) A regulation may provide that a ship includes an aircraft when it is on water or is taking off, or landing on, water.
  - (6) Except as provided by a regulation under subsection (5), a ship does not include an aircraft.
  - (7) A reference to a ship includes the ship's equipment.

#### **10A Meaning of *commercial ship*, *fishing ship* and *recreational ship*, and related provision**

- (1) A *commercial ship* is—
  - (a) a ship other than a fishing ship or recreational ship; or
  - (b) a tender to a ship other than a fishing ship or recreational ship.
- (2) A *fishing ship* is—
  - (a) a ship authorised, under an authority under the *Fisheries Act 1994*, for fishing purposes; or
  - (b) a ship authorised, under a development permit under the *Sustainable Planning Act 2009*, for aquaculture purposes; or
  - (c) a ship that is a boat for which a licence has been granted under the *Fisheries Management Act 1991* (Cwlth) or the *Torres Strait Fisheries Act 1984* (Cwlth); or

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- (d) a tender to a ship mentioned in paragraph (a), (b) or (c).
- (3) A *recreational ship* is—
  - (a) a ship used only for private recreation; or
  - (b) a tender to a ship used only for private recreation.
- (4) For subsection (3), a regulation may provide for deciding if a ship is used only for private recreation.

## **Division 4                      Application of Act**

### **11            General application of Act to ships**

- (1) This Act applies to the following ships—
  - (a) all ships connected with Queensland, wherever they may be, including while they are outside Queensland waters;
  - (b) all ships in a pilotage area or port;
  - (c) all ships on Queensland intrastate voyages, including while they are outside Queensland waters;
  - (d) all ships on interstate voyages while they are in Queensland waters;
  - (e) all ships on overseas voyages while they are in Queensland waters.
- (2) Subsection (1) is subject to this division.
- (3) For the purposes of this section, a ship is taken to be on a voyage from when it gets under way for the voyage until it gets under way for another voyage.

### **12            Relationship with Commonwealth Navigation Act generally**

- (1) This Act does not apply to a ship to the extent that the Commonwealth Navigation Act applies to the ship.

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- (2) However, if the Commonwealth Navigation Act provides that it does not apply to a matter if a State Act deals with the matter and this Act makes provision for the matter, this Act applies to the ship to the extent of the provision made for the matter.

### **13 Aids to navigation—relationship with Commonwealth Acts**

This Act does not apply to an aid to navigation to the extent to which the Commonwealth Navigation Act or another Commonwealth Act applies to the aid to navigation.

### **15 Section 11 subject to certain provisions**

- (1) The provisions of this Act to which section 11 (General application of Act to ships) is subject include the following provisions—
- section 55 (Application) (that deals with the application of part 5 (Registration, licensing, permits and accreditation))
  - section 98 (Application of part) (that deals with the application of part 8 (Pilots))
  - section 187 (Application of division) (that deals with the application of part 14 (Orderly control over ships), division 2 (Passenger carrying ships)).
- (2) Section 11 is also subject to a regulation that expressly excludes the application of this section, in whole or in part.

### **16 Defence ships**

- (1) This Act does not apply to a ship belonging to—
- (a) the Australian Defence Force; or
  - (b) the naval, military or air forces of a foreign country.

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- (2) However, if the master of a ship mentioned in subsection (1) voluntarily uses the services of a pilot, the master and owner of the ship are liable for pilotage fees under this Act.

## **Division 5                      Operation of Act**

### **17            Act binds all persons**

This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth, the other States and the Territories.

### **18            Exemption of person or ship from Act**

- (1) A regulation may exempt a person or ship from this Act or any of its provisions.
- (2) The exemption may be given on specified conditions.
- (3) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

### **18A          Exempting of person or ship from regulatory provision**

- (1) The general manager may exempt a person or ship from a provision of a regulation or a speed limit fixed under section 206A or 206AA (a *regulatory provision*).
- (2) The general manager must consider all relevant matters in deciding whether or not to give an exemption, including, for example, the following—
  - (a) whether the regulatory provision has been substantially complied with;
  - (b) whether compliance with the regulatory provision is unnecessary in the particular circumstances;
  - (c) whether the action taken or proposed to be taken for the matter that is the subject of the exemption is as effective



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as, or more effective than, compliance with the regulatory provision.

- (3) However, the general manager may give an exemption only if the general manager is satisfied giving it will not adversely affect marine safety or the effectiveness and efficiency of the Queensland maritime industry.
- (4) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.
- (5) The general manager must, as soon as is practicable after giving an exemption, give notice of it in the gazette.
- (6) The notice must state the following—
  - (a) the person or ship the exemption is given for;
  - (b) the regulatory provision from which the exemption is given;
  - (c) any conditions on which the exemption is given;
  - (d) any other details the general manager considers relevant.
- (7) The *Statutory Instruments Act 1992*, sections 24 to 26 apply to an exemption as if it were a regulation.
- (8) A regulation may regulate the giving of an exemption.

## **Part 2 Marine safety strategies**

### **Division 1 Development and approval of strategies**

#### **19 Development of marine safety strategies**

- (1) The chief executive must, from time to time, develop for the Minister's approval strategies for marine safety that are designed to give effect to the coordination plan in relation to marine safety in accordance with the objectives of this Act.

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- (2) In developing marine safety strategies, the chief executive must take reasonable steps to engage in public consultation.
- (3) The Minister may, at any time, direct the chief executive to prepare new marine safety strategies for the Minister's approval or to amend marine safety strategies in the way the Minister directs.
- (4) The Minister may approve marine safety strategies that are submitted for approval or require the chief executive to amend the strategies in the way the Minister directs.
- (5) In this section—  
*coordination plan* means the Transport Coordination Plan developed under the *Transport Planning and Coordination Act 1994*.

## 20 Contents of marine safety strategies

- (1) Marine safety strategies must include—
  - (a) a statement of the specific objectives sought to be achieved; and
  - (b) proposals for the provision of marine safety and related marine operational initiatives; and
  - (c) investment criteria for deciding priorities for government supported marine safety and related marine operational initiatives and options for financing the priorities; and
  - (d) appropriate performance indicators for deciding whether, and to what extent, the objectives of the strategies have been achieved.
- (2) Marine safety strategies must aim to provide an adequate framework for coordinating and integrating the provision of transport services between the different transport modes.
- (3) Marine safety strategies must take account of agreements or arrangements between the State and other States and Territories and the Commonwealth, and Australia's international obligations, about marine safety.

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**21 Tabling of marine safety strategies**

The Minister must cause marine safety strategies, and each amendment of marine safety strategies, approved by the Minister to be tabled in the Legislative Assembly.

**Division 2 Obligations of marine safety strategies**

**22 Objective of division**

In giving effect to the overall objective of this Act, this division is intended to ensure value for money for resources applied to achieving marine safety.

**23 Obligations about marine safety**

The chief executive must ensure that—

- (a) marine safety strategies are developed in a way that—
  - (i) takes into account national and international benchmarks and international best practice; and
  - (ii) promotes, within overall transport objectives, the safe transport of persons and goods; and
  - (iii) encourages efficient and competitive behaviour in the Queensland marine industry; and
- (b) the provision and operation of all marine safety infrastructure and services for which the State is responsible is designed to achieve—
  - (i) efficiency; and
  - (ii) affordable quality; and
  - (iii) cost effectiveness.

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**24 Report on giving effect to s 23 (Obligations about marine safety)**

Each annual report of the department must include a report on the way in which effect has been given to section 23 (Obligations about marine safety) during the financial year to which the report relates.

**Division 3 Implementation of safety strategies**

**25 Development of marine safety implementation programs**

- (1) The chief executive must, each year, develop for the Minister's approval marine safety implementation programs for the year and for 1 or more later years.
- (2) Marine safety implementation programs must include—
  - (a) a program of projects, and policies and financial provisions, for implementing marine safety strategies; and
  - (b) performance targets for marine safety.
- (3) Marine safety implementation programs may include proposals to spend amounts on programs other than marine safety if the spending would contribute to the effectiveness and efficiency of the Queensland marine industry.
- (4) In developing marine safety implementation programs, the chief executive must take reasonable steps to consult with port authorities or a port operator, local governments and sectors of the maritime industry that, in the chief executive's opinion, would be affected by the programs.
- (5) Marine safety implementation programs are to be made publicly available in the way decided by the Minister.
- (6) The Minister may at any time direct the chief executive to amend marine safety implementation programs.
- (7) The Minister may approve marine safety implementation programs that are submitted for approval or require the chief

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executive to amend the programs in the way the Minister directs.

## **26 Consistency with marine safety strategies**

- (1) Subject to directions of the Minister, marine safety implementation programs must be consistent with marine safety strategies.
- (2) If the Minister gives a direction under this section that results in marine safety implementation programs being inconsistent with marine safety implementation strategies, the Minister must cause a copy of the direction to be tabled in the Legislative Assembly within 5 sitting days after it is given.

## **27 Report on operation of marine safety implementation programs**

Each annual report of the department must include a report on the operation of the marine safety implementation programs during the financial year to which the annual report relates.

# **Part 3 How to understand this Act**

## **28 To which ships does this Act apply**

- (1) The power to legislate for ships is shared between the Commonwealth and the States and Territories.
- (2) As a general rule, this Act does not apply to a ship to the extent to which the Commonwealth Navigation Act applies to the ship.

*Editor's note—*

See section 12(1) (Relationship with Commonwealth Navigation Act generally).

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- (3) The application of the Commonwealth Navigation Act to ships varies throughout the Act depending on the subject matter of the provisions concerned.
- (4) Section 11(1) (General application of Act to ships) provides a general statement of the ships to which this Act applies.

*Editor's note—*

In general terms, these are ships with a sufficient ownership, operational or registration connection with Queensland, ships in Queensland pilotage areas, ports and waters and ships on Queensland intrastate voyages.

- (5) This general statement is, however, subject to the application of the Commonwealth Navigation Act and certain provisions of the Act and regulations.
- (6) Section 15 (Section 11 subject to certain provisions) specifies the main exceptions to the general statement.

*Editor's note—*

See also section 16 (Defence ships).

## **29 Achieving an appropriate balance between safety and cost**

- (1) This Act is primarily about marine safety.
- (2) Even though it is possible to regulate to achieve the highest level of safety, this would ignore the impact of the regulation on the effectiveness and efficiency on the Queensland maritime industry.
- (3) Therefore, this Act establishes a system to achieve an appropriate balance between safety and cost.

## **30 What is the system that is established**

- (1) The Act imposes general obligations for safety on the following people in the maritime industry—
  - ship designers
  - ship builders

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- marine surveyors
  - ship owners (including operators)
  - ship masters and crew
  - pilots.
- (2) These general safety obligations are generally intended to be performance based rather than prescriptive and to allow people to find more cost efficient ways of achieving safety.
  - (3) Thus, for example, to establish compliance with a general safety obligation about the way a ship is built and enable a ship to be registered, some people may choose to rely on a certificate of compliance issued for the ship by an appropriately accredited person.
  - (4) Other people may, however, prefer to have a ship surveyed and to obtain a certificate of survey for a definite time.
  - (5) To allow a choice to be made between the 2 approaches, the Act provides, under the regulations, for the issue of both certificates of compliance and certificates of survey.

### **31 What is a standard**

- (1) Standards will help people to understand the general safety obligations.
- (2) Standards may deal with most matters about marine safety and issues affecting marine safety that may be dealt with by regulation, including, for example, the building, crewing and operation of ships and cargo handling.
- (3) However, a standard may not prescribe offences, fees or charges.
- (4) Standards are made by the general manager and approved by the Governor in Council.
- (5) The general manager must go through a consultation process before a standard can be approved.
- (6) This consultation process allows people in the maritime industry to comment on a standard and make suggestions for

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changes, including changes that may result in a more effective and efficient maritime industry.

### **32 What happens if a person does not comply with a relevant standard**

- (1) If a person does not comply with a relevant standard, this may establish noncompliance with a general safety obligation.
- (2) However, the court may be satisfied that the ship was safe even though the standard was not complied with.

*Example—*

If a ship designer designs a ship that does not comply with a standard for the design of a ship of the type being designed, the noncompliance with the standard may establish that the seaworthiness declaration made by the ship designer was not correct. However, the ship designer may satisfy the court that the ship was seaworthy, despite the standard.

*Editor's note—*

See section 42 (Relationship between regulatory provisions and general safety obligations about the condition of ships) for a fuller statement.

### **33 What happens if a ship has a certificate of compliance or survey**

A certificate of compliance or certificate of survey for a ship issued under this Act or by another recognised authority may be used to establish that a general safety obligation has been complied with in whole or part.

*Editor's note—*

See section 42(3)(a).

### **34 What mechanisms ensure safety**

There are various mechanisms in the Act to ensure safety, including, for example, the following—

- (a) certain key groups of people need to be licensed or accredited under the Act and will be regulated under the licensing or accreditation system;



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- (b) accredited ship designers, ship builders and marine surveyors are responsible for ensuring the correctness of important safety aspects of certificates of compliance that they issue;
  - (c) owners and masters of ships are responsible for ensuring that ships are safe;
  - (d) owners, masters, pilots, crew members and other persons involved with the operation of ships are responsible for ensuring that ships are operated safely;
  - (e) ships must have the required safety equipment;
  - (f) certain ships need to be registered;
  - (g) shipping inspectors are to be appointed and have the power to monitor ships to see if they are safe and are operated safely;
  - (h) whenever a significant marine incident happens, it must be investigated by a shipping inspector and may be the subject of a reference by the Minister to a board of inquiry established for the incident;
  - (i) the chief executive or general manager may suspend or cancel an approval;
  - (j) the maximum penalties are substantial if a person is found guilty of contravening the Act.

*Editor's note—*

If a provision of this Act provides that the maximum penalty for an offence may be a fine or imprisonment, the court may impose both (*Penalties and Sentences Act 1992*, section 180A). If a body corporate is convicted of an offence against this Act, the court may impose a fine of 5 times the maximum fine that could be imposed on an individual (*Penalties and Sentences Act 1992*, section 181B). Thus, for example, the maximum fine that could be imposed on summary conviction on a body corporate ship owner for an offence against section 41 (General safety obligation of ship owners and masters about condition of ships) is 2500 penalty units. If the contravention causes death or grievous bodily harm, the maximum fine on conviction on indictment is 25000 penalty units.

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### **35 How is safety in Queensland waters achieved**

- (1) Some Queensland waters need to be controlled to ensure safety.
- (2) The Act, therefore, allows areas of Queensland waters to be declared as pilotage areas.
- (2A) The Act also allows a pilotage area, or part of a pilotage area, to be declared as a compulsory pilotage area.
- (3) Control in pilotage areas is achieved by requiring certain ships to use a pilot when the ship is entering, leaving or navigating within a compulsory pilotage area.
- (4) Control is also achieved by appointing harbour masters and authorising them to give directions about ships and their navigation.
- (5) Part 7 (Harbour masters) sets out the powers of harbour masters.

### **36 How are harbour masters and shipping inspectors accountable**

- (1) In exercising a power, harbour masters are accountable to the general manager under the *Public Service Act 2008* and must comply with part 7 (Harbour masters).
- (2) In exercising a power, shipping inspectors are accountable to the general manager under the *Public Service Act 2008* and must comply with part 13 (Shipping inspectors).
- (3) Harbour masters and shipping inspectors are also subject to controls under other laws, including, for example, the *Judicial Review Act 1991*.

### **37 How is the chief executive accountable**

The chief executive must report annually to Parliament through the Minister on the Act's operation.

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**38 Does the Act mention everything that will appear in the regulations and standards**

The Act allows for matters to be provided by regulation or standard even though express reference may not be made to the matters in the Act.

*Example—*

Reference is made in the Act to the registration of a ship, the amendment, renewal, or transfer of the registration of the ship or the exemption of the ship from registration. However, details about these matters are to be found in regulations or standards and not the Act.

**39 Operation of part**

This part does not limit, but may extend, the meaning of—

- (a) a provision of another part of this Act; or
- (b) a provision of a regulation or standard.

*Example—*

If a regulation provides for a matter and this part mentions the matter, this part cannot be used to limit, but may extend, the regulation making power or the regulation.

## **Part 4 General safety obligations and standards**

### **Division 1 General safety obligations**

**40 General safety obligation of ship designers, ship builders and marine surveyors about condition of ships**

- (1) An accredited ship designer, ship builder or marine surveyor who issues a certificate of compliance for a ship must ensure that each declaration made in the certificate is correct in every particular.

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Maximum penalty—500 penalty units or imprisonment for 1 year.

- (2) However, if—
- (a) a particular that was incorrectly declared in the certificate causes a marine incident; and
  - (b) the marine incident involves the death of, or grievous bodily harm to, a person;

the accredited ship designer, ship builder or marine surveyor commits an indictable offence and is liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.

#### **41 General safety obligation of ship owners and masters about condition of ships**

- (1) The owner and master of a ship must not operate the ship unless the ship is safe.

Maximum penalty—500 penalty units or imprisonment for 1 year.

- (2) However, if the contravention of subsection (1) causes a marine incident involving the death of, or grievous bodily harm to, a person, the owner and master commit an indictable offence and are liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.
- (3) For the purposes of this section, a ship is safe if it is seaworthy, and is appropriately equipped and crewed, to meet the ordinary perils of the voyage on which the ship is proceeding or about to proceed.

#### **42 Relationship between regulatory provisions and general safety obligations about the condition of ships**

- (1) In this section—

*certificate of compliance* includes an equivalent certificate issued under a law of the Commonwealth or another State.

*general safety provision* means section 40 or 41.

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**regulatory provision** means a provision of a regulation or standard about the condition, equipping or crewing of ships.

- (2) This section applies if—
  - (a) it is claimed in a proceeding that a person contravened a general safety provision because of the condition of a ship or its equipping or crewing (the **safety issue**); and
  - (b) a regulatory provision provided a way of dealing with the safety issue to achieve safety.
- (3) If it is proved that the safety issue was not dealt with in the way provided by the regulatory provision, the general safety provision is taken to have been contravened unless the court is satisfied that—
  - (a) it was reasonable for the person to rely on either of the following to satisfy compliance with the general safety provision—
    - (i) a certificate of survey or a certificate of compliance issued by someone other than the person that was in force for the ship and covered the safety issue (completely or partly);
    - (ii) an approval of the design of the ship or part given by the general manager under part 5, division 5; or
  - (b) the general safety provision was complied with, despite noncompliance with the regulatory provision.
- (4) In deciding whether the general safety provision had been complied with despite noncompliance with the regulatory provision, the court must have regard to the objectives of this Act.

#### **43 General obligation on persons involved with operation of ship to operate it safely**

- (1) A person involved with a ship's operation (including the owner, master, pilot and crew members) must not cause the ship to be operated unsafely.

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Maximum penalty—500 penalty units or imprisonment for 1 year.

- (2) Without limiting subsection (1), a person causes a ship to be operated unsafely if the person causes the ship to be operated in a way that—
  - (a) causes a marine incident; or
  - (b) contravenes—
    - (i) conditions of the ship's registration about safety; or
    - (ii) a provision of a regulation that is declared by a regulation to be a provision to which this section applies.
- (3) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, a person, the owner, master, pilot, crew member or other person commits an indictable offence and is liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.
- (4) A person does not contravene this section because of subsection (2)(a) if the only basis for holding that a marine incident has been caused is lawful damage to, or danger of lawful damage to, property of which the person is the sole owner.
- (5) In this section—

*lawful damage* means damage that is not unlawful under the Criminal Code, section 469.

#### 44 Safety equipment obligation

- (1) The owner or master of a ship must not operate a ship if—
  - (a) the ship is required by a regulation to be equipped with safety equipment; and
  - (b) the ship is not equipped with the safety equipment.

Maximum penalty—500 penalty units or imprisonment for 1 year.

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- (2) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, a person, the owner or master commits an indictable offence and is liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.
- (3) In this section—  
*safety equipment* means equipment that is declared by a regulation to be safety equipment to which this section applies.

## **Division 2                      Standards**

### **45                      Standards**

- (1) The general manager may make standards under this Act.
- (2) A standard or an amendment of a standard is subordinate legislation.
- (4) A standard is not effective until it is approved by the Governor in Council.

### **46                      Contents of standard**

- (1) A standard may provide for any matter about which a regulation may be made.

*Editor's note—*

See section 208 (Marine safety regulations—generally).

- (2) However, a standard may not prescribe for offences, fees or charges.

### **47                      Notice of proposal to prepare draft standard**

- (1) Before making a standard about a matter, the general manager must give public notice of a proposal to prepare a draft standard about the matter.
- (2) The notice must be published—

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- (a) once a week for 2 consecutive weeks in a newspaper circulating generally throughout the State; and
  - (b) if the standard applies only to a particular area of the State—in a newspaper circulating generally in the area.
- (3) If the proposal relates only to an aspect or part of the maritime industry, the notice must also specify the aspect or part.
- (4) The notice must—
- (a) invite submissions on the proposal from public authorities, industry, interested groups and persons, and the public; and
  - (b) specify a day, not earlier than 30 days from the first publication of the notice in the newspaper mentioned in subsection (2)(a), by which submissions may be made to the general manager.

#### **48 Preparation of draft standard**

- (1) In preparing the draft standard mentioned in a proposal published under section 47 (Notice of proposal to prepare draft standard), the general manager must consider all submissions properly made to the general manager on the proposal.
- (2) The general manager must also ensure that the draft standard—
- (a) sets out its purposes; and
  - (b) takes into account national and international benchmarks and best practices.

#### **49 Notice of draft standard**

- (1) When a draft standard has been prepared, the general manager must give public notice of the draft standard.
- (2) The notice must be published—
- (a) once a week for 2 consecutive weeks in a newspaper circulating generally throughout the State; and



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- (b) if the standard applies only to a particular area of the State—in a newspaper circulating generally in the area.
- (3) The notice must—
- (a) specify the addresses where copies of the draft standard may be inspected and, on payment of the fee prescribed by regulation, purchased; and
  - (b) invite submissions on the draft standard from public authorities, industry, interested groups and persons, and the public; and
  - (c) specify a day, not earlier than 30 days from the first publication of the notice in the newspaper mentioned in subsection (2)(a), by which submissions may be made to the general manager.

## **50 Making of standard**

- (1) The general manager—
- (a) must consider all submissions properly made to the general manager on the draft standard; and
  - (b) must have regard to the submissions in making the standard for submission to the Governor in Council for approval.
- (2) No further notice under section 49 is required even if the general manager changes the draft standard after considering the submissions.

## **51 Interim standards**

- (1) If the general manager is satisfied that, for reasons of urgency, it is necessary or desirable to make a standard on an interim basis, the general manager may make the standard even though the following sections have not been complied with—
- section 47 (Notice of proposal to prepare draft standard)
  - section 48 (Preparation of draft standard)
  - section 49 (Notice of draft standard)

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- section 50 (Making of standard).
- (2) The interim standard must include a sunset provision stating the interim standard expires 6 months after its commencement.

### **53 Regulations prevail over standards**

- (1) If there is any inconsistency between a regulation and a standard, the regulation prevails to the extent of the inconsistency.
- (2) Subsection (1) applies whether the standard was made before or after the regulation.

### **54 Amendment of standards**

- (1) This division applies to the amendment of a standard in the same way as it applies to the making of a standard with any necessary changes.
- (2) However, sections 47 to 50 do not apply to the amendment of a standard if the general manager considers the proposed amendment—
  - (a) is not likely to impose appreciable costs on the community or a part of the community; or
  - (b) only provides for, or to the extent it only provides for, any matter mentioned in the *Statutory Instruments Act 1992*, section 46(1)(a), (b), (c), (e), (f), (g), (h) or (i).

### **54A Application of Acts Interpretation Act 1954**

The *Acts Interpretation Act 1954*, section 24AA does not apply to the amendment or repeal of a standard under this division.

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## **Part 5                      Registration, licensing, permits                                     and accreditation**

### **Division 1                Application of part**

#### **55              Application**

A provision of this part applies only to ships declared by regulation to be ships to which the provision applies.

### **Division 2                Registration of ships**

#### **56              Regulation may require registration of ship**

A regulation may require the owner of a ship to register the ship as a commercial ship, fishing ship or recreational ship.

#### **57              Contravention of registration obligations**

- (1) The owner or master of a ship must not operate the ship if the ship is required to be registered, but is not registered.
- (2) If a ship is registered as a recreational ship, the ship's owner or master must not operate the ship except as a recreational ship or as otherwise provided for under a regulation.
- (3) If a ship is registered as a commercial ship, the ship's owner or master must not operate the ship except as a commercial ship or as otherwise provided for under a regulation.
- (4) If a ship is registered as a fishing ship, the ship's owner or master must not operate the ship except as a fishing ship or as otherwise provided for under a regulation.
- (5) If a ship is registered on conditions, the owner or master must not operate it in contravention of the conditions.

Maximum penalty—200 penalty units.

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**58 Registration, amendment, renewal and transfer etc.**

Registration, amendment of registration, renewal of registration, transfer of registration or exemption from registration may be applied for, and granted or refused, as prescribed by regulation.

**59 Cancellation, suspension and amendment of registration**

The chief executive or general manager may cancel or suspend the registration of a ship, or amend the registration of a ship without application by the owner, only by fair procedures prescribed by regulation.

**Division 3 Licensing of masters, crew members and pilots**

**60 Regulation may require licences**

- (1) A regulation may require a person to hold a licence—
  - (a) to operate a ship as its master; or
  - (b) to act as a crew member of a ship; or
  - (c) to have the conduct of a ship as its pilot.

- (2) In this section—

*licence* includes a certificate of competency, service or recognition and a permit.

**61 Operation of ship as master etc. without required licence**

- (1) A person must not operate a ship as its master if the person is required to be licensed, but is not appropriately licensed.
- (2) A person must not act as a crew member of a ship if the person is required to be licensed, but is not appropriately licensed.

- (3) A person must not have the conduct of a ship as its pilot if the person is required to be licensed, but is not appropriately licensed.

Maximum penalty—40 penalty units.

## **62 Grant, amendment and renewal of licences**

- (1) The grant, amendment or renewal of a licence may be applied for, and granted or refused, as prescribed by regulation.
- (2) A regulation may make provision for licences to be granted, amended or renewed—
- (a) by the chief executive or general manager; or
  - (b) by an entity accredited, under the regulation, by the chief executive or general manager.
- (3) Also, a regulation may provide for either the chief executive or the general manager—
- (a) to conduct examinations, or to approve an entity to conduct examinations, to establish whether a person meets a requirement under a regulation; or
  - (b) to approve an entity to conduct training programs about the operation of ships.
- (4) Without limiting subsection (2), a regulation may provide for the following—
- (a) a marine licence indicator to be in the form approved by the chief executive or general manager, including a card on which information may be stored electronically;
  - (b) a PIN to be used by the holder of a smartcard marine licence indicator as a security measure to protect information stored electronically on the smartcard marine licence indicator.

### **62A When licence is void**

A licence obtained by a false statement or misrepresentation is void.

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## **63 Cancellation, suspension and amendment of licences**

The chief executive or general manager may cancel or suspend a licence, or amend a licence or marine licence indicator without application by the licensee, only by fair procedures prescribed by regulation.

*Note—*

Section 202C(1) provides that, when an order is made under section 202A for a person, a licence, and any subsisting licence, held by the person for whom the order is made is cancelled. Also, section 202I provides for a regulation-making power for cancelling or suspending a restricted licence.

### **63AA Smartcard marine licence indicator is property of the State**

- (1) A smartcard marine licence indicator is and remains the property of the State.
- (2) Subsection (1) applies even though a person other than the State—
  - (a) has the right to use information that is on the smartcard marine licence indicator or stored electronically on it; or
  - (b) has the right to have information stored on the smartcard marine licence indicator.
- (3) The State is not legally liable for an act or omission relating to the keeping or use of the smartcard marine licence indicator.

## **Division 3A Biometric data and other information relating to marine licences**

### **63A Obtaining digital photo and digitised signature**

- (1) A person must allow the chief executive or general manager to take and keep—
  - (a) a digital photo and digitised signature of the person, if—

- (i) the person applies for the grant or renewal of a marine licence (the *authority applied for*) or an amendment of the person's marine licence; or
  - (ii) the person is the holder of a marine licence and applies for a marine licence indicator, or the renewal, replacement or amendment of a smartcard marine licence indicator; or
- (b) a digital photo or digitised signature of the person, if—
  - (i) the person applies for anything else in relation to a marine licence or a marine licence indicator; and
  - (ii) the chief executive or general manager has given the person written notice under subsection (3) or (4) in relation to the photo or signature.
- (2) Subsection (1)(a) does not apply to the person if—
  - (a) as allowed under this Act or a prescribed smartcard Act, the chief executive or general manager is keeping the person's most recent digital photo and digitised signature; and
  - (b) the chief executive or general manager is satisfied the person's most recent digital photo is still a true likeness of the person; and
  - (c) the shelf life of the person's most recent digital photo and digitised signature, or the most recent extension of the shelf life under section 63AB, has not ended and will not end before—
    - (i) if the grant or renewal of a marine licence indicator is applied for—the term of the authority applied for ends; or
    - (ii) otherwise—the term of the smartcard marine licence indicator ends.
- (3) If the chief executive or general manager considers it reasonably necessary to use facial recognition technology to establish a person's connection to the person's most recent digital photo, the chief executive or general manager may give the person a written notice requiring the person to allow the

[s 63AB]

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chief executive or general manager to take and keep a digital photo of the person.

- (4) If the chief executive or general manager is satisfied there is sufficient connection between the digital photo taken under subsection (1)(b) and the person's most recent digital photo, the chief executive or general manager may give the person a written notice requiring the person to allow the chief executive or general manager to take and keep a digitised signature of the person.
- (5) The chief executive or general manager must refuse to consider any application by the person relating to a marine licence or a marine licence indicator if—
  - (a) the person does not comply with subsection (1); or
  - (b) the chief executive or general manager is not satisfied there is sufficient connection between the digital photo taken under subsection (1)(b) and the person's most recent digital photo.

### **63AB Extending shelf life of digital photo and digitised signature**

- (1) The chief executive or general manager may, for this Act, extend the shelf life of the most recent digital photo and digitised signature of a person.
- (2) The period for which the shelf life may be extended under subsection (1) must not result in the shelf life being extended under the subsection for periods totalling more than 6 months.

*Example—*

If the shelf life has been extended previously under subsection (1) for 2 months, the next extension under the subsection must not be for more than 4 months.

### **63B Using digital photo and digitised signature**

- (1) The chief executive or general manager may, with a person's consent, use the person's most recent digital photo and digitised signature for any of the following purposes—



- (a) to help identify the person for deciding whether or not to grant an application for a marine licence;
  - (b) to reproduce the person's digital photo and digitised signature on a smartcard marine licence indicator;
  - (c) for a digital photo taken under section 63A(1)(b), to establish the person's connection to the person's most recent digital photo when the person makes any application relating to a smartcard marine licence indicator.
- (2) The chief executive or general manager may use a person's most recent digital photo and digitised signature to help in an investigation of, or proceeding for, an offence that—
- (a) happens—
    - (i) in making the application for which the person's digital photo and digitised signature are taken under section 63A(1); or
    - (ii) during the retention period for the digital photo and digitised signature; and
  - (b) involves a person obtaining or attempting to obtain any of the following by a false statement, misrepresentation or any other dishonest way—
    - (i) a marine licence;
    - (ii) a smartcard marine licence indicator or its renewal or replacement;
    - (iii) a PIN or anything else for a smartcard marine licence indicator.

### **63C Restricted access to a digital photo**

- (1) The chief executive or general manager may allow a person to access a digital photo kept by the chief executive or general manager under this Act if each of the following applies—
- (a) the person's facial image is encoded on the digital photo;

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- (b) the person applies to the chief executive or general manager, in the approved form, for the access;
- (c) the person establishes, to the chief executive's or general manager's reasonable satisfaction, the person's connection to the digital photo by other evidence of his or her identity, or by facial recognition technology.

*Example of other evidence for paragraph (c)—*

a valid Australian passport

- (2) An application mentioned in subsection (1)(b) may be made by electronic communication.
- (3) The chief executive or general manager must allow a police officer to access a digital photo kept by the chief executive or general manager under this Act or a prescribed smartcard Act if either of the following applies—
  - (a) the access is for exercising a power in relation to this Act or the Criminal Code, section 328A;

*Editor's note—*

The Criminal Code, section 328A creates offences for the dangerous operation of a vehicle (which is defined under the Criminal Code, section 1 to include a vessel).

- (b) the access is authorised under the *Police Powers and Responsibilities Act 2000*.
- (4) In this section—

*access*, a digital photo, means obtain a copy of the digital photo, including by electronic communication.

### **63D Deleting digital photo and digitised signature from register or similar record**

When the retention period for a digital photo and digitised signature taken under this Act ends—

- (a) the chief executive must delete the photo and signature from any register or similar record kept by the chief executive under this Act; and

- (b) if the general manager keeps a register or similar record containing digital photos and digitised signatures taken and kept by the general manager under this Act—the general manager must delete the photo and signature from the register or similar record.

**63F Restricted access to information stored electronically on a smartcard marine licence indicator**

- (1) A person must not access information stored electronically on a smartcard marine licence indicator, unless the person is—
  - (a) the holder of the smartcard marine licence indicator; or
  - (b) a person who has the holder’s consent to access the information; or
  - (c) subject to subsection (2), a shipping inspector, including a police officer, and the access is for exercising a power under this Act; or
  - (d) a police officer who is authorised under the *Police Powers and Responsibilities Act 2000* to access the information.

Maximum penalty—20 penalty units.

- (2) A person acting under subsection (1)(c) must not access any emergency contact information stored electronically on the smartcard marine licence indicator.

Maximum penalty—20 penalty units.

*Note—*

See the *Transport Planning and Coordination Act 1994*, section 36H for the storing of emergency contact information.

- (3) In this section—

***access***, in relation to information stored electronically on a smartcard marine licence indicator, means view or take a copy of the information.

***emergency contact information***, of a holder of a smartcard marine licence indicator, means any or all of the following information—

[s 63G]

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- (a) the name of a person to be contacted if there is a risk to the holder's life or health;
- (b) the following information about a person mentioned in paragraph (a)—
  - (i) the person's phone number;
  - (ii) the person's address.

### **63G Retention period for digital photo and digitised signature**

- (1) This section sets out the retention period for a digital photo and digitised signature taken under this Act.
- (2) Unless subsection (3) applies, the retention period for a digital photo and digitised signature taken under section 63A(1) is—
  - (a) if an application mentioned in section 63A(1)(a) is granted or a digital photo or digitised signature taken under section 63A(1)(b) is to be used under section 63B(1)(b)—30 years after the relevant day; or
  - (b) if an application mentioned in section 63A(1)(a) is not granted—
    - (i) 6 months after the relevant day; or
    - (ii) the period decided by the chief executive or general manager;whichever is the shorter period; or
  - (c) if paragraph (a) or (b) does not apply—24 hours after the relevant day.
- (3) Despite subsection (2), if—
  - (a) an investigation as mentioned in section 63B(2) is started before the end of the retention period worked out under subsection (2)(b) or (c) of this section for a digital photo and digitised signature; and
  - (b) the chief executive or general manager reasonably requires the digital photo and digitised signature to be kept for a longer period for the investigation or a proceeding resulting from the investigation;

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the retention period for the digital photo and digitised signature is the longer period mentioned in paragraph (b) of this subsection.

(4) In this section—

*relevant day*, for a digital photo and digitised signature, means the day on which the digital photo and digitised signature are taken.

### **63H Annual report about access to digital photos**

- (1) Not later than 4 months after the end of each financial year, the chief executive must prepare and give to the Minister an annual report stating the number of occasions on which access within the meaning of section 63C was allowed under section 63C(3) during the financial year to digital photos kept under this Act.
- (2) The Minister must cause a copy of the report to be laid before the Legislative Assembly within 14 days after the Minister receives it.

## **Division 3B Restricted release of information about marine licences**

### **63I Restricted written release of information**

- (1) The chief executive or general manager may release, in writing, information kept under this Act about a person's marine licence or marine history to—
  - (a) on receiving an application in the approved form—
    - (i) the person; or
    - (ii) with the person's written consent—another person; or
  - (b) the commissioner of the police service for the purpose of any function of the commissioner or any function of the police service; or

[s 63J]

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- (c) an entity that, under an agreement between the State and other governments, maintains a database containing information about marine licences and marine histories.
- (2) Also, the chief executive may release, in writing, to an entity information kept under this Act about a person's marine licence if—
  - (a) the person produces the person's smartcard marine licence indicator to the entity as proof of the person's identity; and
  - (b) the entity applies in the approved form for the information; and
  - (c) the information is necessary to verify the validity of the smartcard marine licence indicator.
- (3) Before releasing information to a person or entity under subsection (1)(c), the chief executive or general manager must be satisfied any release of the information by the person or entity will be limited to circumstances similar to those mentioned in subsection (1).
- (4) Information that may be released under subsection (1) or (2) does not include a digital photo and digitised signature.
- (5) An application mentioned in subsection (1)(a) or (2)(b) may be made by electronic communication.
- (6) This section does not limit section 205B.

*Note—*

Section 205B deals with the electronic search of information to verify that a person is the holder of a licence under this Act.

### **63J Restricted oral release of particular information**

- (1) The chief executive may orally release, to a person, information kept under this Act about the person's marine licence or marine history.
- (2) However, subsection (1) applies only if the chief executive is satisfied that the person is the person to whom the information relates.

*Example for subsection (2)—*

The chief executive may be satisfied as required under subsection (2) if the person correctly answers a series of questions, or produces a document, for identifying the person.

## **Division 4                      Accreditation of ship designers, ship builders and marine surveyors**

### **64            Object of division**

The object of the system of accreditation provided for by this division is to ensure that ships are designed, built and surveyed in a way that maintains safety, but gives ship designers, ship builders and marine surveyors the opportunity to devise programs of design, building or survey that—

- (a) best suit their circumstances and the circumstances of their clients; and
- (b) reduce the need for day-to-day oversight.

### **65            Regulation may provide for accreditation**

A regulation may provide for the accreditation of a person as a ship designer, ship builder or marine surveyor.

### **66            Design of ships**

A person must not issue a certificate of compliance for the design of a ship or a part of a ship unless the person is a ship designer who is accredited to issue the certificate.

Maximum penalty—500 penalty units or imprisonment for 1 year.

### **66A          Building of ships**

A person must not issue a certificate of compliance for the building of a ship or part of a ship unless the person is a ship builder who is accredited to issue the certificate.

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Maximum penalty—500 penalty units or imprisonment for 1 year.

## **67 Restriction on building of ships**

(1) A person must not build a ship, or part of a ship, unless—

- (a) either—
  - (i) a certificate of compliance for the design of the ship or part has been issued by a ship designer who is accredited to issue the certificate; or
  - (ii) the general manager has approved the design of the ship or part; and
- (b) the person is a ship builder who is accredited to build the ship or part.

Maximum penalty—500 penalty units or imprisonment for 1 year.

(2) A person who is not an appropriately accredited ship builder may build a ship or a part of a ship if—

- (a) either—
  - (i) a certificate of compliance for the design of the ship or part has been issued by a ship designer who is accredited to issue the certificate; or
  - (ii) the general manager has approved the design of the ship or part; and
- (b) the ship or part is surveyed, as required by regulation, by a marine surveyor who is accredited to survey the ship or part; and
- (c) the conditions that may be prescribed by regulation are met.

Maximum penalty—500 penalty units or imprisonment for 1 year.



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**68 Surveying of ships**

A person must not issue a certificate of compliance based on the surveying of a ship or a part of a ship unless the person is a marine surveyor who is accredited to issue the certificate.

Maximum penalty—500 penalty units or imprisonment for 1 year.

**69 Grant, amendment or renewal of accreditation**

The grant, amendment or renewal of an accreditation may be applied for and granted or refused as prescribed by regulation.

**70 Cancellation, suspension and amendment of accreditation**

The general manager may cancel or suspend an accreditation, or amend an accreditation without application by the accredited person, only by fair procedures prescribed by regulation.

**Division 5 Other provisions about ship design and survey**

**70A General manager may approve ship design**

- (1) The general manager may approve the design of a ship or a part of a ship.
- (2) However, the general manager must not approve a design for a ship or part unless the general manager is satisfied—
  - (a) the design meets the requirements of any standard about ship design made under part 4, division 2 and applying to the ship; and
  - (b) the ship or part is designed to be seaworthy under the conditions under which it is to be used.

[s 70B]

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### **70B Statements in certificate of survey**

- (1) The general manager may, in a certificate of survey for a ship, make a statement about the design or survey of the ship the general manager considers appropriate.

*Example—*

The general manager may make a statement in the certificate about how the design or survey of the ship conforms to a standard about designing or surveying ships.

- (2) Subsection (1) applies despite any statement in a certificate of compliance for the design or survey of the ship.

### **70C Protection from liability**

- (1) An officer of the department is not civilly liable for an act or omission done honestly and without negligence under this division.
- (2) If subsection (1) prevents a civil liability attaching to a person, the liability instead attaches to the State.

## **Part 6 Pilotage areas**

### **71 Pilotage areas and compulsory pilotage areas**

A regulation may—

- (a) declare—
  - (i) an area of Queensland waters to be a pilotage area; or
  - (ii) a pilotage area, or part of a pilotage area, to be a compulsory pilotage area; or
- (b) close a pilotage area or a part of a pilotage area.

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**72 Harbour master may permit ship navigation in closed pilotage area**

- (1) If a pilotage area or part of a pilotage area is closed by regulation, a harbour master may permit a person to—
  - (a) cause a ship to enter, leave or navigate in the area or part; or
  - (b) anchor, berth or moor a ship in the area or part.
- (2) If it is not practicable for the harbour master to give the person a written permission under subsection (1), the harbour master must make a written note of the permission and its details.

**73 Failure to comply with closure of pilotage area**

- (1) This section applies if a regulation closes a pilotage area or part of a pilotage area.
- (2) A person must not, without the permission of a harbour master—
  - (a) cause a ship to enter, leave or navigate in the pilotage area or part, unless the person has a reasonable excuse; or
  - (b) anchor, berth or moor a ship in the pilotage area or part, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

## **Part 7 Harbour masters**

### **Division 1 General**

**74 Appointment of harbour masters**

- (1) The chief executive may appoint an officer or employee of MSQ to be a harbour master.

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- (2) A person appointed as a harbour master is a shipping inspector without further appointment.

**75 Only qualified persons may be appointed as harbour masters**

The chief executive may appoint a person to be a harbour master only if—

- (a) in the chief executive's opinion, the person has the necessary expertise or experience to be a harbour master and shipping inspector; or
- (b) the person has satisfactorily finished training approved by the chief executive.

**76 Limitations on powers of a harbour master**

- (1) The powers of a harbour master may be limited—
- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by notice of the chief executive given to the harbour master.
- (2) In exercising a power, a harbour master is subject to the direction of the general manager.

**77 Harbour master to consult with port authority**

- (1) Before a harbour master exercises a power that may affect the functions of a port authority, the harbour master must consult with the port authority to the extent reasonably practicable.
- (2) Failure to comply with subsection (1) does not affect the validity of the exercise of the power.

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**77A Harbour master to consult with Gold Coast Waterways Authority**

- (1) Before a harbour master exercises a power that may affect the functions of the Gold Coast Waterways Authority, the harbour master must consult with the Gold Coast Waterways Authority to the extent reasonably practicable.
- (2) Failure to comply with subsection (1) does not affect the validity of the exercise of the power.

**78 End of appointment**

The appointment of a person as a harbour master ends if the person ceases to be an officer or employee of MSQ.

**79 Delegation by harbour master**

- (1) A harbour master may delegate the harbour master's functions to—
  - (a) an officer or employee of the public service who the harbour master is satisfied has the necessary expertise or experience to exercise the functions; or
  - (b) a shipping inspector; or
  - (c) an officer or employee of a port authority; or
  - (ca) an employee of MSQ; or
  - (d) a police officer; or
  - (e) someone else prescribed by regulation.
- (2) A delegation under subsection (1)(d) has effect only if the commissioner of the police service has given written approval to the proposed delegation.
- (3) In this section—  
*functions* include powers.

[s 80]

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## **80 Identity cards**

- (1) The chief executive must give an identity card to each harbour master.
- (2) A harbour master who delegates functions or powers to a person, other than a shipping inspector, must give an identity card to the person.
- (3) The identity card of a harbour master or a harbour master's delegate must—
  - (a) contain a photograph of the harbour master or delegate; and
  - (b) be in a form approved by the chief executive; and
  - (c) be signed by the harbour master or delegate.
- (4) A person who ceases to be a harbour master or delegate must return the person's identity card to the chief executive as soon as is practicable after the person ceases to be a harbour master or delegate, unless the person has a reasonable excuse for not returning it.

Maximum penalty for subsection (4)—40 penalty units.

## **81 Proof of authority**

- (1) A harbour master must display the harbour master's identity card for inspection by a person if the harbour master, in person, gives a direction to the person or exercises another power in relation to the person.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the harbour master must produce the identity card for inspection by the person at the first reasonable opportunity.
- (3) If a harbour master gives a written direction to a person, the written direction must be on letterhead approved by the chief executive.
- (4) If a harbour master gives a direction to a person by radio, megaphone or another form of distance communication, the

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harbour master must identify himself or herself as a harbour master.

## **82 Protection from liability**

- (1) A harbour master is not civilly liable for an act or omission done honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a harbour master, the liability attaches instead to the State.

## **83 Harbour masters to give notice of damage**

- (1) A harbour master who, in the exercise of a power under this part, damages anything must promptly give written notice of the particulars of the damage.
- (2) The notice must be given—
  - (a) if the thing is a ship or is on a ship—to the ship’s master;  
or
  - (b) in any other case—to the person who appears to the harbour master to be the owner of the thing.
- (3) If, for any reason, it is not practicable to comply with subsection (2), the harbour master must—
  - (a) leave the notice on the thing that is damaged; and
  - (b) ensure the notice is left in a reasonably secure way in a conspicuous position.

## **84 Impersonation of harbour master**

A person must not pretend to be a harbour master.

Maximum penalty—40 penalty units.

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## **85 Obstruction of harbour master**

A person must not obstruct a harbour master in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

## **Division 2 Powers of harbour masters**

### **Subdivision 1 Powers of direction**

#### **86 General limitation on harbour master's power to give directions under subdivision**

- (1) A harbour master may give a direction under this subdivision only if the harbour master reasonably considers it necessary to give the direction to ensure safety.
- (2) In giving the direction, the harbour master must have regard to the need to ensure the effectiveness and efficiency of the Queensland maritime industry.

#### **86A Direction may be general or particular**

- (1) A direction under this subdivision may be given as a general direction or particular direction.
- (2) A *general direction* is a direction that—
  - (a) applies to all ship owners, ship masters, ships, other persons or matters; or
  - (b) is limited in its application to stated classes of ship owners, ship masters, ships, other persons or matters; or
  - (c) otherwise applies generally or generally with stated exceptions or factors.
- (3) A general direction may—
  - (a) make different provision for different ship owners, ship masters, ships, other persons or matters, or different



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- classes of ship owners, ship masters, ships, other persons or matters; or
- (b) apply differently to stated exceptions or factors.
- (4) A **particular direction** is a direction that applies to—
- (a) a particular ship owner or ship master, including an owner or master mentioned in the direction only as the owner or master of a stated particular ship; or
- (b) a particular ship; or
- (c) another particular person or matter.
- (5) A general direction or particular direction may be given orally, in writing or in another way.
- (6) Without limiting subsection (5)—
- (a) an oral direction may be given by the harbour master, an agent of the harbour master or a shipping inspector—
- (i) personally to a person; or
- (ii) by phone, radio or or another form of electronic communication; or
- (iii) by megaphone or another form of distance communication; or
- (b) a written direction may be given by way of a written notice published or otherwise reasonably made available or known to any person to whom it applies, including, for example, by publication in a newspaper or by a fax or email; or
- (c) a direction may be given in another way appropriate for the maritime environment by being published or otherwise reasonably made available or known to any person to whom it applies, including, for example, by use of flags or lights.
- (7) For a particular direction applying to a ship's master, the direction may be given to another person in control of the ship if it is not practicable to give the particular direction to the ship's master.

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- (8) A particular direction given under subsection (7) to a person in control of a ship, other than the ship's master, is taken to have been given to the ship's master.
- (9) In a proceeding, if an issue arises about whether a direction was given to a person, the party alleging the direction was given must prove that the person had, or reasonably ought to have had, knowledge of the direction.

## **87 Power of Minister to require directions**

- (1) The Minister may ask the chief executive to require a harbour master to give a direction under this subdivision.
- (2) Section 86 does not apply to the giving of the direction by a harbour master.
- (3) A request may only be made by the Minister if the Minister is satisfied that exceptional circumstances exist to justify the Minister's intervention in the public interest.
- (4) If the Minister makes a request under this section, the request must be—
  - (a) notified in the gazette as soon as practicable after it is made; and
  - (b) tabled in the Legislative Assembly within 14 days after it is given.

## **87A Owner of ship lost, abandoned or stranded**

- (1) This section applies if—
  - (a) a ship is lost, abandoned or stranded; and
  - (b) a harbour master may, or is required to, give a direction under this subdivision to a person about the ship.
- (2) For this division, the person who was the registered owner of the ship immediately before the ship was lost, abandoned or stranded is taken to be the owner of the ship and the person to whom the direction may or must be given, unless the contrary is proved.

- (3) Without limiting subsection (2), if a harbour master incurs expense (whether the expense is the harbour master's expense or the State's expense) in exercising a power under section 93 in relation to the direction, the person taken to be the owner under subsection (2) is the person who is liable for the amount of the expense that may, under section 94, be recovered from the owner of the ship.
- (4) If, under subsection (2), more than 1 person is taken to be the owner of the ship, on the giving of the direction to any of the owners, all of the owners are jointly and severally liable for the amount of the expense mentioned in subsection (3).
- (5) To remove any doubt, it is declared that the registered owner mentioned in subsection (2) is the person in whose name the ship is registered under a law of the State or another jurisdiction, whether inside or outside Australia.

**87B Direction to master about operation of ship in relation to a marine incident area**

- (1) A harbour master may direct the master of a ship to operate the ship in a stated way.
- (2) Without limiting subsection (1), the harbour master may direct the master of a ship in or adjacent to a marine incident area to operate the ship in a stated way, including, for example, in any of the following ways—
  - (a) not to cause the ship to enter the marine incident area;
  - (b) to cause the ship to enter the marine incident area in a stated way;
  - (c) to navigate the ship in the marine incident area in a stated way;
  - (d) to anchor, berth or moor the ship at a stated place in the marine incident area;
  - (e) to move the ship from an anchorage, berth or mooring in the marine incident area;
  - (f) to cause the ship to leave the marine incident area or to leave the marine incident area in a stated way.

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- (3) A person must not contravene a direction under this section, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—200 penalty units.

## **88 Direction to master about operation of ship in relation to pilotage area**

- (1) A harbour master may direct the master of a ship to navigate or otherwise operate the ship in relation to a pilotage area in a specified way, including, for example—
- (a) not to cause the ship to enter the pilotage area; or
  - (b) to cause the ship to enter the pilotage area in a specified way; or
  - (c) to navigate the ship in the pilotage area in a specified way; or
  - (d) to anchor, berth or moor the ship at a specified place in, or adjacent to, the pilotage area; or
  - (e) to move the ship from an anchorage, berth or mooring in the pilotage area; or
  - (f) to cause the ship to leave the pilotage area or to leave the pilotage area in a specified way.
- (2) A person must not contravene a direction under subsection (1), unless the person has a reasonable excuse for the contravention.

Maximum penalty for subsection (2)—200 penalty units.

## **89 Direction to person in charge of a place**

- (1) A harbour master may direct the person in charge of a place in, or adjacent to, a marine incident area or pilotage area—
- (a) to allow a ship to be berthed at the place or moved from the place; or
  - (b) to allow access through the place to and from the ship.

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- (2) A person must comply with a direction under subsection (1), unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (2)—200 penalty units.

## **90 Direction to person carrying out works**

- (1) A harbour master may direct a person who is carrying out construction work in or near a marine incident area or pilotage area to light or mark the works in a specified way.
- (2) The direction may specify when the action is to be taken.
- (3) A person must comply with a direction under subsection (1), unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (3)—200 penalty units.

## **91 Direction to person about obstruction**

- (1) A harbour master may direct a person responsible for something that is obstructing, or may obstruct, navigation to remove it.
- (2) The direction may specify how, when and to where the thing must be moved.
- (3) A person must comply with a direction under subsection (1), unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (3)—200 penalty units.

## **92 Direction to person to put out certain lights etc.**

- (1) This section applies if a harbour master reasonably believes a light, sign, signal, electrical or radio installation or equipment or anything else (a *source of interference*)—
- (a) may be or has been mistaken for, may interfere or is interfering with, or may otherwise affect or is otherwise affecting the proper operation of, an aid to navigation; or

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- (b) may otherwise affect the safe operation of ships.
- (2) The harbour master may direct the following persons to put out, remove or screen the source of interference, or to take other specified action in relation to the source of interference—
  - (a) the owner or occupier of the place where the source of interference is situated;
  - (b) the person the harbour master reasonably believes owns or is responsible for the source of interference.
- (3) The direction may specify how and when the action is to be taken.
- (4) A person must comply with a direction under subsection (2), unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (4)—200 penalty units.

## **Subdivision 2      Other powers**

### **93      Harbour master may carry out direction**

- (1) This section applies if—
  - (a) a person has contravened a direction under subdivision 1 that the person must comply with; or
  - (b) a harbour master reasonably believes there is no-one to whom a proposed direction under subdivision 1 may be given and, because of urgent circumstances, the harbour master must act under this section.
- (2) The harbour master may, to the extent necessary to ensure safety as mentioned in section 86(1), carry out the direction or proposed direction.
- (3) Without limiting subsection (2), the harbour master may—
  - (a) board a ship and operate it, including, for example, by moving or navigating it; or

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- (b) enter or remain in a place in, or adjacent to, a marine incident area or pilotage area in order to board a ship and anchor, berth, moor or move it; or
  - (c) light or mark construction works; or
  - (d) remove a thing that is obstructing, or may obstruct, navigation; or
  - (e) put out, remove or screen, or take other action in relation to, a source of interference.
- (4) If the harbour master attaches the ship (the *first ship*) to another ship or a buoy, wharf or pile, this Act does not prevent the owner or master of the other ship, or the owner of the buoy, wharf or pile, from recovering damages for injury or loss suffered, because of the attachment, from the owner or master of the first ship.

#### **94 Recovery by State of expenses of carrying out direction**

- (1) This section applies if a harbour master incurs expense (whether the expense is the harbour master's expense or the State's expense) in exercising a power under section 93.
- (2) The amount of the expense may be recovered as a debt by the State by action in a court of competent jurisdiction from the persons liable for the expense.
- (3) The following persons are liable for the expense—
  - (a) if a direction was given to a person under section 87B, 89, 90, 91 or 92 and the person did not comply with the direction—the person;
  - (b) if a direction under section 87B, 89, 90, 91 or 92 could have been given to a person but was not given for the reasons mentioned in section 93(1)(b)—the person;
  - (c) if a direction under section 88 was given to the master of a ship and the master did not comply with the direction—the master and the owner of the ship;

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*Note for paragraph (c)—*

Under section 86A(8) a direction given to the person in control of a ship is taken to have been given to the ship's master.

- (d) if a direction under section 88 could have been given to the master of a ship but was not given for the reasons mentioned in section 93(1)(b)—the master and the owner of the ship.
- (4) If, under subsection (3), more than 1 person is liable for the same expense, the persons who are liable for the expense are jointly and severally liable.
- (5) In this section—

*direction* means—

- (a) a direction given under subdivision 1 that, under the subdivision, a person must comply with; or
- (b) a direction that could have been given under subdivision 1 and, if it had been given under the subdivision, a person would have been required to comply with.

## **95 Temporary closure of pilotage area by harbour master**

- (1) A harbour master may close a pilotage area or a part of a pilotage area if the harbour master is satisfied that the closure is required for a limited period to ensure safety.
- (2) The harbour master must take the steps necessary to ensure that ships that may be affected by the closure are aware of it.
- (3) The harbour master must revoke the closure when the harbour master ceases to be satisfied that the closure is still required to ensure safety.
- (4) However, the closure ends 14 days after the closure is made if it is not earlier revoked.
- (5) When the closure ends, the harbour master must immediately take the steps necessary to ensure that ships that may be affected by the closure are aware of the ending of the closure.



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**96 Harbour master may permit ship navigation in closed pilotage area**

- (1) If a pilotage area or part of a pilotage area is closed by a harbour master, a harbour master may permit a person to—
  - (a) cause a ship to enter, leave or navigate in the pilotage area or part; or
  - (b) anchor, berth or moor a ship in the pilotage area or part.
- (2) If it is not practicable for the harbour master to give written permission under subsection (1), the harbour master must make a written note of the permission and its details.

**97 Failure to comply with closure of pilotage area by harbour master**

- (1) This section applies if a harbour master closes the area or part of a pilotage area.
- (2) A person must not, without a harbour master's permission—
  - (a) cause a ship to enter, leave or navigate in the pilotage area or part, unless the person has a reasonable excuse; or
  - (b) anchor, berth or moor a ship in the pilotage area or part, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—200 penalty units.

## **Part 8 Pilots**

**98 Application of part**

This part applies only to ships declared by regulation to be ships to which the part applies.

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## **99 Pilots required for ship navigation in compulsory pilotage area**

A person must not navigate a ship in a compulsory pilotage area unless the person uses the services of a pilot.

Maximum penalty—200 penalty units.

## **100 Regulations about pilotage**

A regulation may provide for the duties of—

- (a) a ship's owner and master to arrange for pilotage; and
- (b) a ship's master to ensure the safety of a pilot when the pilot is boarding, leaving or on board the ship; and
- (c) a ship's master to enable the pilot to discharge the pilot's duties; and
- (d) a pilot of a ship to ensure the safety of the ship in the pilotage area, whether the use of the pilot is required or voluntary; and
- (e) a pilot's employer—
  - (i) to equip the pilot; and
  - (ii) to develop and maintain the skills needed by the pilot to discharge the pilot's duties; and
- (f) a master exempted from pilotage under a regulation.

## **101 Immunity for pilots and general employers**

- (1) A conducting pilot is not civilly liable for damage or loss caused by an act or omission of the conducting pilot.
- (2) A supervising pilot is not civilly liable for damage or loss caused by an act or omission of the conducting pilot or the supervising pilot.
- (3) The general employer of a conducting pilot or supervising pilot is not civilly liable for damage or loss caused by an act or omission of the conducting pilot or supervising pilot.
- (4) Subsections (1) to (3) do not affect—

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- (a) any liability of a conducting pilot or supervising pilot's general employer for not appointing a qualified and competent person as a pilot; and
  - (b) any liability of a ship's master and owner.
- (5) In this section—

***conducting pilot*** means a pilot who has the conduct of a ship as its pilot.

***general employer***, of a conducting pilot or supervising pilot, includes, if MSQ has entered into a written agreement for the supply of pilotage services in a compulsory pilotage area and the pilot is acting in the supply of the services, each party to the agreement.

***supervising pilot*** means a person who is licensed under a regulation as a pilot and who is on board a ship to train a conducting pilot or assess a conducting pilot's competence as a pilot.

## **102 Liability of owner or master of ship under pilotage**

- (1) The pilot who has the conduct of a ship is subject to the master's authority.
- (2) The master of a ship is not relieved from responsibility for the ship's operation merely because the ship is under pilotage.
- (3) The owner and master of a ship being navigated by a pilot because the pilotage is compulsory under this Act or another Act is liable for loss or damage caused by the ship, or by a fault of the navigation of the ship, as if the pilotage were not compulsory.

### **102A Restriction on conduct of ship by pilot**

- (1) A pilot must not have the conduct of a ship as its pilot unless the pilot—
  - (a) is an employee of MSQ; or

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- (b) is acting in the supply of pilotage services the subject of a written agreement between—
  - (i) MSQ; and
  - (ii) the pilot or another person.

Maximum penalty—40 penalty units.

- (2) Despite subsection (1), a pilot may have the conduct of a ship as its pilot if another pilot (the *supervisor*) is training the pilot, or assessing the pilot's competence, and the supervisor—
  - (a) is an employee of MSQ; or
  - (b) is acting in the supply of pilotage services the subject of a written agreement between—
    - (i) MSQ; and
    - (ii) the supervisor or another person.
- (3) Subsections (1) and (2) do not limit section 61(3).

### **103 Offence of impersonating a pilot**

A person must not pretend to be a pilot.

Maximum penalty—40 penalty units.

## **Part 9 Aids to navigation**

### **104 Meaning of *aid to navigation***

- (1) An *aid to navigation* is a device designed to be used for navigation or the guidance of mariners, including a device to help in—
  - (a) fixing a ship's position; or
  - (b) deciding a safe course for a ship; or
  - (c) warning a ship of dangers or obstructions.

*Examples—*

beacon, buoy, light, lighthouse, marine mark, radio aid or signal

- (2) An ***aid to navigation*** includes any structure or equipment ancillary to the aid to navigation.

*Examples—*

- 1 the battery house providing a lighthouse with power
- 2 lifesaving equipment that is part of an aid to navigation

- (3) However, an ***aid to navigation*** does not include a device on board a ship.

## **105 General manager may set up aid to navigation**

- (1) The general manager may set up an aid to navigation—
- (a) in or near a pilotage area; and
  - (b) in any other place where the general manager considers the aid to navigation is desirable to ensure the safety of people or ships or other property.
- (2) The general manager may enter into agreements for setting up an aid to navigation.
- (3) This section does not limit other powers that the general manager has to set up aids to navigation.

## **150A Gold Coast Waterways Authority may set up aid to navigation**

- (1) Without limiting section 105, the Gold Coast Waterways Authority may set up an aid to navigation in Gold Coast waters—
- (a) in or near a pilotage area; and
  - (b) in any other place where the authority considers the aid to navigation is desirable to ensure the safety of people or ships or other property.
- (2) The Gold Coast Waterways Authority may enter into agreements for setting up an aid to navigation.

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- (3) This section does not limit other powers that the Gold Coast Waterways Authority has to set up aids to navigation.

## **106 Unlawful interference with an aid to navigation**

- (1) A person must not unlawfully interfere with an aid to navigation.

Maximum penalty—500 penalty units or imprisonment for 1 year.

- (2) However, if—

- (a) the interference with the aid causes a marine incident; and  
(b) the marine incident involves the death of, or grievous bodily harm to, a person;

the person commits an indictable offence and is liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.

- (3) A person unlawfully interferes with an aid to navigation if the person wilfully, and without authority, justification or excuse, detrimentally interferes with the effective or efficient operation of the aid.

*Examples of detrimental interference—*

- 1 A person removes, alters, damages or disturbs the aid.
- 2 A person obstructs the operation of the aid.

## **107 Trespassing on aid to navigation**

A person must not—

- (a) moor a ship to an aid to navigation or climb the aid, unless the person has a reasonable excuse for mooring the ship or climbing the aid; or  
(b) if the aid to navigation is a lighthouse—enter the lighthouse or any enclosed area around the lighthouse,

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unless the person has a reasonable excuse for entering the lighthouse or area.

Maximum penalty—40 penalty units.

### **107A Damage to an aid to navigation**

- (1) This section applies if a ship damages or destroys an aid to navigation.
- (2) The master and the owner of the ship are jointly and severally liable for the expense of repairing or reinstating the aid to navigation.
- (3) The amount of the expense may be recovered as a debt by the State by action in a court of competent jurisdiction from the master and the owner of the ship.

## **Part 11 Marine incidents**

### **123 What is a *marine incident***

- (1) A *marine incident* is an event causing or involving—
  - (a) the loss of a person from a ship; or
  - (b) the death of, or grievous bodily harm to, a person caused by a ship's operations; or
  - (c) the loss or presumed loss or abandonment of a ship; or
  - (d) a collision with a ship; or
  - (e) the stranding of a ship; or
  - (f) material damage to a ship; or
  - (g) material damage caused by a ship's operations; or
  - (h) danger to a person caused by a ship's operations; or
  - (i) danger of serious damage to a ship; or

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- (j) danger of serious damage to a structure caused by a ship's operations.
- (2) A *marine incident* also includes another event prescribed by regulation.
- (3) However, a *marine incident* does not include an event declared by regulation not to be a marine incident.

## **124 Duties of masters to help if a marine incident happens involving 2 or more ships**

- (1) This section applies to a marine incident involving 2 or more ships.
- (2) The master of each ship involved in the marine incident must, to the extent that the master can do so without danger to the master's ship or persons on board the master's ship—
  - (a) give to each other ship involved in the incident, its master and persons on board the ship the help necessary to save them from danger caused by the marine incident; and
  - (b) stay by the other ship until the other ship does not need further help; and
  - (c) give to the master of the other ship reasonable particulars adequate to identify the ship and its owner.

Maximum penalty—

- (a) for contravention of paragraph (a) or (b)—500 penalty units or imprisonment for 1 year;
- (b) for contravention of paragraph (c)—40 penalty units.
- (3) However, if the contravention of subsection (2)(a) or (b) causes the death of, or grievous bodily harm to, a person, the master commits an indictable offence and is liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.



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## **125 Marine incidents must be reported**

- (1) If a marine incident causing or involving the loss or presumed loss or abandonment of a ship happens, the owner of the ship must report the marine incident to a shipping inspector at the earliest opportunity, but within 48 hours after the owner becomes aware of the incident, unless the owner has a reasonable excuse for not complying with this subsection.

Maximum penalty—40 penalty units.

- (2) If—
  - (a) a ship is involved in another type of marine incident; or
  - (b) a ship's master has reason to believe that the ship has been involved in another type of marine incident;

the master of the ship must report the marine incident to a shipping inspector within 48 hours after the incident happens, unless the master has a reasonable excuse for not complying with this subsection.

Maximum penalty—40 penalty units.

- (3) If the report under subsection (1) or (2) is not made to the shipping inspector in the approved form, the owner or master must make a further report about the marine incident to a shipping inspector in the approved form at the earliest opportunity.

Maximum penalty—40 penalty units.

- (4) It is a reasonable excuse if the owner under subsection (1), or the master under subsection (2), did not have access to a way of reporting the marine incident within the time stated in the relevant subsection.
- (5) Subsection (4) does not limit the circumstances that may constitute a reasonable excuse under subsections (1) and (2).

## **125A Temporary declaration of exclusion zone by general manager**

- (1) The general manager may declare a stated area around a ship involved in a marine incident to be an exclusion zone if the

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general manager is reasonably satisfied the declaration is required for a limited period to ensure safety.

- (2) The general manager must take the steps necessary to ensure ships that may be affected by the declaration are aware of it, including, for example, by a notice to mariners.
- (3) The general manager must revoke the declaration when the general manager ceases to be satisfied that the exclusion zone is still required to ensure safety.
- (4) The declaration ends 28 days after the declaration is made if it is not earlier revoked.
- (5) When the declaration ends under subsection (3) or (4), the general manager must immediately take the steps necessary to ensure ships that may be affected by the exclusion zone are aware of the ending of the exclusion zone.

### **125B Failure to comply with declaration of exclusion zone by general manager**

- (1) This section applies if the general manager declares an exclusion zone under section 125A.
- (2) A person must not, without the general manager's permission—
  - (a) cause a ship to enter or navigate in the exclusion zone, unless the person has a reasonable excuse; or
  - (b) anchor, berth or moor a ship in the exclusion zone, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—200 penalty units.

### **126 Investigation process into marine incident**

- (1) If—
  - (a) a marine incident happens; or
  - (b) the general manager believes that a marine incident may have happened, even though it has not been reported;

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the general manager may require a shipping inspector to investigate the matter.

- (2) After finishing the investigation, the inspector must report the results of the investigation to the general manager.
- (3) If, after considering the report, the general manager is satisfied that a marine incident has happened, the general manager—
  - (a) may recommend to the chief executive that the chief executive recommend to the Minister the establishment of a board of inquiry into the incident; and
  - (b) may, under the regulations, cancel, suspend or amend an approval of a ship or person involved in the incident.
- (4) Subsections (2) and (3) do not prevent the general manager from—
  - (a) requiring the inspector to provide interim reports to the general manager; or
  - (b) taking action mentioned in subsection (3) before the inspector has finished the inspector's investigation.

## **127 Regular reports of marine incidents to Minister**

- (1) The chief executive must prepare a report for each calendar year about all marine incidents reported within the year.
- (2) The report need only contain general particulars of each marine incident and a statistical analysis.
- (3) The report must be given to the Minister within 6 months after the year to which the report relates.
- (4) The Minister may appoint a person who is not an officer or employee of a public sector unit to review the report and give the Minister any recommendations the person considers appropriate.
- (5) The chief executive must give the person any reasonable help the person requires.

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## **128 Report and any recommendations to be tabled**

- (1) The Minister must table a copy of each report under section 127 (Regular reports of marine incidents to Minister) in the Legislative Assembly within 14 days after receiving the report.
- (2) The Minister must also table a copy of recommendations made to the Minister under section 127(4) about the report in the Legislative Assembly within 14 days after receiving the recommendations.

## **129 Report of dangers to navigation**

- (1) This section applies if the master of a ship becomes aware of something in the ship's vicinity that is a danger to navigation.

*Examples of possible dangers to navigation—*

- 1 an abandoned ship
- 2 a damaged aid to navigation
- 3 a tropical storm, cyclone or similar weather conditions

- (2) If the ship is fitted with a working radio, the master must promptly send out the signal prescribed by regulation followed by a message giving the information required by regulation to ships in the vicinity and the nearest harbour master or coastal radio station.

Maximum penalty for subsection (2)—40 penalty units.

- (3) If the ship is not fitted with a working radio, the master must promptly communicate the information required by regulation by any other available form of communication to ships in the vicinity and as soon as practicable inform a harbour master or coastal radio station of the information.

Maximum penalty for subsection (3)—40 penalty units.

## **130 Obligation of master to give help**

- (1) If the master of a ship at sea has reason to believe that persons on or from a ship or aircraft are in distress at sea, the master must, unless the master cannot do so or, in the special

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circumstances of the case, considers it unreasonable or unnecessary to do so, go as quickly as possible to help the persons and, if possible, inform them that this is happening.

Maximum penalty—500 penalty units or imprisonment for 1 year.

- (2) The master of a ship or aircraft in distress at sea may, after consultation as far as practicable with the masters of ships that answer the master's call for help, requisition the ships that the master considers best able to help.
- (3) The master of a requisitioned ship must comply with the requisition by going as quickly as possible to help the persons in distress.

Maximum penalty—500 penalty units or imprisonment for 1 year.

- (4) However, if the contravention of subsection (1) or (3) causes the death of, or grievous bodily harm to, a person, the relevant master commits an indictable offence and is liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.
- (5) If the master of a ship that has not been requisitioned is informed of the requisition of another ship and that the requisition is being complied with by the other ship, the master is released from the master's obligation under subsection (1).
- (6) If the master of a ship is informed by persons in distress, or by the master of another ship that has reached persons in distress, that help is no longer necessary, the master is released from any obligation under subsection (1) or (3) in relation to the persons.
- (7) The master of a ship must make a record—
  - (a) of any information received by the master that persons on or from a ship or aircraft are in distress at sea; and
  - (b) if the master did not go as quickly as possible to help the persons—the master's reasons.

Maximum penalty—500 penalty units.

## **Part 12**                      **Boards of inquiry**

### **Division 1**                      **General**

#### **131**      **Minister may establish or re-establish boards of inquiry**

- (1) The Minister may establish or re-establish a board of inquiry about a marine incident by gazette notice.
- (2) The notice, or a subsequent gazette notice, may specify matters relevant to the inquiry including, for example, the number and appointment of members, the chairperson and the terms of reference.
- (3) The Minister may exercise powers under this section for a marine incident—
  - (a) whether or not the incident has been investigated under part 11 (Marine incidents) or a recommendation made to the Minister by the chief executive under that part about the incident; or
  - (b) whether or not a board of inquiry had previously inquired into the incident.

#### **132**      **Role of board of inquiry**

- (1) The board of inquiry must—
  - (a) inquire into the circumstances and probable causes of the relevant marine incident; and
  - (b) give the Minister a written report of the board's findings.
- (2) The report may contain the recommendations the board considers appropriate and other relevant matters.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.
- (4) However, if the board gives the Minister a separate report of matters that the board considers should not be made public,

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the Minister need not table the separate report in the Legislative Assembly.

### **133 Conditions of appointment**

- (1) Members of the board of inquiry are entitled to be paid the fees and allowances that may be decided by the Minister.
- (2) The members hold office on the terms not provided by this Act that may be decided by the Minister.

### **134 Chief executive to arrange for services of staff and financial matters for board of inquiry**

As soon as practicable after the board of inquiry is established, the chief executive must consult with the chairperson of the board and arrange—

- (a) for the services of officers and employees of the department or of MSQ, shipping inspectors and other persons to be made available to the board for the conduct of the inquiry; and
- (b) for financial matters relevant to the board.

### **135 Shipping inspector may exercise powers for board's inquiry**

- (1) This section applies to a shipping inspector whose services have been made available to the board of inquiry.
- (2) The inspector may exercise the powers of a shipping inspector under part 11 (Marine incidents) for the marine incident the subject of the board's inquiry.

## **Division 2 Conduct of inquiry**

### **136 Procedure**

- (1) When conducting its inquiry, the board of inquiry—

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- (a) must observe natural justice; and
  - (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.
- (2) In conducting the inquiry, the board—
- (a) is not bound by the rules of evidence; and
  - (b) may inform itself in any way it considers appropriate, including holding hearings; and
  - (c) may decide the procedures to be followed for the inquiry.
- (3) However, the board must comply with this division and any procedural rules prescribed by regulation.
- (4) The chairperson presides at the inquiry.

### **137 Notice of inquiry**

The chairperson of the board of inquiry must give at least 14 days written notice of the time and place of the inquiry to—

- (a) the owner and master of each ship concerned in the marine incident the subject of the inquiry; and
- (b) any other person who the chairperson has reason to believe should be given the opportunity to appear at the inquiry.

### **138 Inquiry to be held in public other than in special circumstances**

- (1) An inquiry must be held in public.
- (2) However, the board may, of its own initiative or on the application of a person represented at the inquiry, direct that the inquiry, or a part of the inquiry, be held in private, and give directions about the persons who may be present.



- (3) The board may give a direction under subsection (2) only if it is satisfied that it is proper to make the order in the special circumstances of the inquiry.

### **139 Protection of members, legal representatives, witnesses and others**

- (1) A member of the board of inquiry has, in the performance of the member's duties, the same protection and immunity as a judge of the Supreme Court.
- (2) A barrister, solicitor or other person appearing before the board for someone else has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.
- (3) A person summoned to attend or appearing before the board as a witness has the same protection as a witness in a proceeding in the Supreme Court.
- (4) A person whose services are made available to a board of inquiry as mentioned in section 134(a) is not civilly liable for an act or omission done honestly and without negligence in providing services to the board for the conduct of the inquiry.
- (5) If subsection (4) prevents a civil liability attaching to a person, the liability attaches instead to the State.

### **140 Record of proceedings to be kept**

The board of inquiry must keep a record of its proceedings.

### **141 Procedural fairness and representation**

In the conduct of the inquiry, the board must give the master and owner of each ship concerned in the marine incident the subject of the inquiry, the opportunity of making a defence to all claims made against the person either in person or by counsel, solicitor or agent.

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## **142 Board's powers on inquiry**

- (1) In conducting the inquiry, the board may—
  - (a) act in the absence of any person who has been given a notice under section 137 (Notice of inquiry) or some other reasonable notice; and
  - (b) receive evidence on oath or affirmation or by statutory declaration; and
  - (c) adjourn the inquiry; and
  - (d) disregard any defect, error, omission or insufficiency in a document; and
  - (e) permit or refuse to permit a person, whether the person is an Australian legal practitioner or not, to represent someone else at the inquiry.
- (2) A member of the board may administer an oath or affirmation to a person appearing as a witness before the inquiry.
- (3) Subsection (1)(e) does not authorise a person who is not an Australian legal practitioner to engage in legal practice contrary to the *Legal Profession Act 2007*.

## **143 Notice to witness**

- (1) The chairperson of the board of inquiry may, by written notice given to a person, require the person to attend the inquiry at a specified time and place to give evidence or produce specified documents or things.
- (2) A person required to appear as a witness before the board is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the chairperson.

## **144 Inspection of documents or things**

- (1) If a document or thing is produced to the board at the inquiry, the board may—
  - (a) inspect the document or thing; and

- (b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the inquiry.
- (2) The board may also take possession of the document or thing, and keep it while it is necessary for the inquiry.
- (3) While it keeps a document or thing, the board must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at a reasonable place and time that the board decides.

#### **145 Inquiry may continue despite court proceedings unless otherwise ordered**

The inquiry of the board of inquiry may start or continue, and a report may be prepared or given, despite a proceedings before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

#### **146 Offences by witnesses**

- (1) A person given a notice under section 143 (Notice to witness) must not—
  - (a) fail, without reasonable excuse, to attend as required by the notice; or
  - (b) fail, without reasonable excuse, to continue to attend as required by the chairperson of the board of inquiry until excused from further attendance.

Maximum penalty—40 penalty units.

- (2) A person appearing as a witness at the inquiry must not—
  - (a) fail to take an oath or make an affirmation when required by the chairperson of the board; or
  - (b) fail, without reasonable excuse, to answer a question the person is required to answer by a member of the board; or

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- (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by a notice under section 143.

Maximum penalty—40 penalty units.

### **147 Self-incrimination**

- (1) A person appearing as a witness at the inquiry is not excused from—
  - (a) answering a question put to the person at the inquiry; or
  - (b) producing a document or thing at the inquiry;on the ground that the answer or production of the document or thing might tend to incriminate the person.
- (2) However, neither the answer, nor the fact that the person has produced the document or thing, is admissible in evidence against the person in a criminal proceeding (other than a proceeding about the falsity or misleading nature of the answer, document or thing) if—
  - (a) before answering the question or producing the document or thing, the person claims that answering the question or producing the document or thing might tend to incriminate the person; and
  - (b) answering the question or producing the document or thing might in fact tend to incriminate the person.

### **148 False or misleading statements**

A person must not state anything to the board of inquiry that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

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## 149 False or misleading documents

- (1) A person must not give the board of inquiry a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) informs the board, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

## 150 Contempt of board

A person must not—

- (a) insult the board of inquiry; or
- (b) deliberately interrupt the inquiry; or
- (c) create or continue or join in creating or continuing, a disturbance in or near a place where the board is conducting its inquiry; or
- (d) do anything that would be contempt of court if the board were a judge acting judicially.

Maximum penalty—40 penalty units.

## 151 Report of offences

If the board of inquiry considers material before it discloses an offence, it may report the offence to 1 or more of the following persons and may make available to the person or persons all relevant material in the board's possession—

- (a) the commissioner of the police service;
- (b) the Crime and Misconduct Commission;

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- (c) the director of public prosecutions;
- (d) the chief executive.

### **152 Change of membership of board**

The inquiry of the board of inquiry is not affected by a change in its membership.

## **Part 13 Shipping inspectors**

### **Division 1 General**

#### **153 Functions of shipping inspectors**

The functions of shipping inspectors are as follows—

- (a) to monitor ships and their operations to ensure part 4 (General safety obligations and standards) and other provisions of this Act are complied with;
- (b) to monitor the holders of approvals and their business operations to ensure that part 5 (Registration, licensing, permits and accreditation) is complied with;
- (c) to help harbour masters, including exercising any delegated powers under part 7 (Harbour masters);
- (d) to investigate marine incidents and report the results to the general manager under part 11 (Marine incidents);
- (e) to carry out directions of boards of inquiry under part 12 (Boards of inquiry).

#### **154 Shipping inspectors subject to directions from general manager**

A shipping inspector is subject to the directions of the general manager in exercising powers of a shipping inspector.

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**155 Powers of shipping inspectors under this part**

- (1) The powers given to a shipping inspector under this part are in addition to, and do not limit, the powers given to a shipping inspector under—
  - (a) another part of this Act; or
  - (b) a condition of an approval.
- (2) The powers under this part may be exercised in relation to—
  - (a) ships; and
  - (b) places specified in an approval as a place of business; and
  - (c) other premises and vehicles.
- (3) If a shipping inspector may exercise a power under a provision of this part and another provision of this Act, the inspector may exercise the power under either or both provisions.
- (4) If a shipping inspector may exercise a power under this part and under a condition of an approval, the inspector may exercise the power under either or both.

**156 Limitation on powers of a shipping inspector**

The powers of a shipping inspector may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by notice of the general manager given to the shipping inspector.

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## **Division 2                      Appointment of shipping inspectors and other matters**

### **157      Appointment of shipping inspectors**

- (1) The general manager may appoint any of the following persons as shipping inspectors—
  - (a) officers and employees of the public service;
  - (b) officers and employees of port authorities;
  - (c) employees of MSQ;
  - (d) employees of the Gold Coast Waterways Authority;
  - (e) police officers or a class of police officers;
  - (f) other persons prescribed by regulation.
- (2) The general manager may appoint a person (other than a police officer) as a shipping inspector only if—
  - (a) in the general manager's opinion, the person has the necessary expertise or experience to be a shipping inspector; or
  - (b) the person has satisfactorily finished training approved by the general manager.

### **158      Conditions of appointment of shipping inspectors**

- (1) A shipping inspector holds office on the conditions specified in the instrument of appointment.
- (2) A shipping inspector—
  - (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
  - (b) may resign by signed notice of resignation given to the general manager; and
  - (c) if the conditions of appointment provide—ceases holding office as a shipping inspector on ceasing to hold



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some other office specified in the conditions of appointment.

### **159 Shipping inspector's identity card**

- (1) The general manager must give an identity card to each shipping inspector.
- (2) The identity card must—
  - (a) contain a recent photograph of the shipping inspector; and
  - (b) be in a form approved by the general manager; and
  - (c) be signed by the shipping inspector.
- (3) A person who ceases to be a shipping inspector must return the person's identity card to the general manager as soon as practicable after the person ceases to be a shipping inspector, unless the person has a reasonable excuse for not returning it.  
Maximum penalty for subsection (3)—40 penalty units.
- (4) This section does not apply to a shipping inspector who is a police officer.

### **160 Display of shipping inspector's identity card**

- (1) A shipping inspector (other than a police officer) may exercise a power in relation to a person only if the inspector displays the inspector's identity card for inspection by the person.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

### **161 Protection from liability**

- (1) A shipping inspector is not civilly liable for an act or omission done honestly and without negligence under this Act.

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- (2) If subsection (1) prevents a civil liability attaching to a shipping inspector, the liability attaches instead to the State.

## **Division 3                      Powers of shipping inspectors**

### **162      Entry to place by shipping inspectors**

A shipping inspector may enter a place if—

- (a) the occupier of the place consents to the entry; or
- (b) it is a public place and the entry is made when the place is open to the public; or
- (c) it is mentioned in an approval as a place of business and the entry is made when the place is open for conduct of business or is otherwise open for entry; or
- (d) the entry is permitted by a warrant.

### **163      Warrants**

- (1) A shipping inspector may apply to a magistrate for a warrant for a place.
- (2) The application must—
  - (a) be sworn; and
  - (b) specify the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application be given by statutory declaration.

- (4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

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- (a) there is a particular thing or activity (the *evidence*) that may provide evidence of the commission of an offence against this Act; and
  - (b) the evidence is at the place, or may be at the place within the next 7 days.
- (5) The warrant must state—
- (a) that the inspector may, with necessary and reasonable help and force—
    - (i) enter the place; and
    - (ii) exercise the inspector's powers under this Act; and
  - (b) the evidence for which the warrant is issued; and
  - (c) the hours of the day when entry may be made; and
  - (d) the day (within 14 days after the warrant's issue) when the warrant ceases to have effect.

## **164 Warrants—applications made other than in person**

- (1) A shipping inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) Before applying for the warrant, the inspector must prepare an application specifying the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) If the magistrate issues the warrant and it is reasonably practicable to fax a copy of it to the inspector, the magistrate must immediately fax the copy to the inspector.
- (5) If the magistrate issues the warrant but it is not reasonably practicable to fax a copy of it to the inspector—

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- (a) the magistrate must—
  - (i) tell the inspector what the terms of the warrant are; and
  - (ii) tell the inspector the date and time the warrant was signed; and
  - (iii) record the reasons for issuing the warrant on the warrant; and
- (b) the inspector must—
  - (i) complete a form of warrant (*warrant form*) in the same terms as the warrant issued by the magistrate; and
  - (ii) write on the warrant form the name of the magistrate and the date and time the magistrate signed the warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the inspector, is authority for the entry and the exercise of the other powers permitted by the warrant issued by the magistrate.
- (7) The inspector must send to the magistrate—
  - (a) the sworn application; and
  - (b) if a warrant form was completed by the inspector—the completed warrant form.
- (8) The sworn application and any completed warrant form must be sent to the magistrate at the earliest practicable opportunity.
- (9) When the magistrate receives the application and any warrant form, the magistrate must attach them to the warrant issued by the magistrate.
- (10) If—
  - (a) in a proceeding a question arises whether the exercise of a power was authorised by a warrant issued under this section; and
  - (b) the warrant is not produced in evidence;

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the court must presume the exercise of power was not authorised by a warrant unless the contrary is proved.

### **165 Boarding of ships and entry of vehicles**

- (1) A shipping inspector may board a ship at any reasonable time of the day or night to find out whether this Act is being complied with.
- (2) A shipping inspector may also board a ship or enter a vehicle at any reasonable time of the day or night if the inspector has reasonable grounds for suspecting that—
  - (a) the ship or vehicle is being, or has been, used in the commission of an offence against this Act; or
  - (b) the ship or vehicle, or a document or other thing in or on the ship or vehicle, may provide evidence of the commission of an offence against this Act.

### **166 Boarding of ship that is moving or about to move**

- (1) This section applies if a shipping inspector intends to board a ship under section 165 (Boarding of ships and entry of vehicles), including a ship that is being carried or towed by a vehicle.
- (2) If the ship or the vehicle carrying or towing the ship is moving or about to move, the inspector may signal the person in control of the ship or vehicle to stop the ship or vehicle or not to move it.
- (3) To enable the ship to be boarded, the inspector may—
  - (a) act with any necessary and reasonable help and force; and
  - (b) require the person in control of the ship or vehicle to give reasonable help to the inspector.
- (4) A person must not disobey a signal under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

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- (5) A person must not fail to comply with a requirement under subsection (3)(b), unless the person has a reasonable excuse.  
Maximum penalty—200 penalty units.
- (6) It is a reasonable excuse for a person to disobey a signal under subsection (2) if—
  - (a) the person reasonably believes that to obey the signal immediately would have endangered the person or someone else; and
  - (b) the person obeys the signal as soon as it is practicable to obey it.

**167 Shipping inspector's general powers for ships, vehicles and places**

- (1) A shipping inspector who boards a ship, or enters a vehicle or place, under this part may—
  - (a) search any part of the ship, vehicle or place; or
  - (b) inspect, examine, photograph or film anything in or on the ship, vehicle or place; or
  - (c) take samples of or from anything in or on the ship, vehicle or place; or
  - (d) if the inspector boards a ship—survey the ship or any part of it; or
  - (e) take extracts from, or make copies of, any documents in or on the ship, vehicle or place; or
  - (f) take into or onto the ship, vehicle or place any persons, equipment and materials the inspector reasonably requires for exercising any powers in relation to the ship, vehicle or place; or
  - (g) require the occupier of the place, or any person in or on the ship, vehicle or place, to give the inspector reasonable help for the exercise of the powers mentioned in paragraphs (a) to (f); or

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(h) if the inspector boards a ship or enters a vehicle—require the person in control of the ship or vehicle—

- (i) to bring the ship or vehicle to a specified place; and
- (ii) to remain in control of the ship or vehicle at the place for a reasonable time;

to enable the inspector to exercise the powers mentioned in paragraphs (a) to (f); or

(i) if the inspector boards a ship or enters a vehicle—require the person in control of the ship or vehicle to accompany the inspector to enable the inspector to comply with subsection (6).

- (2) A person who is required by a shipping inspector under subsection (1)(g) to give reasonable help to the inspector for the exercise of a power must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

- (3) If the help is required to be given by a person by—

- (a) answering a question; or
- (b) producing a document (other than a document required to be kept by the person under this Act);

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

- (4) A person who is required by a shipping inspector under subsection (1)(h) to take action in relation to a ship or vehicle must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

- (5) A person who is required under subsection (1)(i) to accompany an inspector must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

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- (6) The inspector must not enter a part of a ship or vehicle that is used only as a living area, or exercise powers under subsection (1)(a) to (f) in relation to the part, unless the inspector is accompanied by the person in control of the ship or vehicle.
- (7) Subsection (6) does not apply if the person in control of the ship or vehicle is unavailable or unwilling to accompany the inspector or the inspector is unable for another reason to comply with the subsection.

### **167A Power to require production of marine safety equipment**

- (1) A shipping inspector may ask the owner or master operating a ship to make available, for the inspector's inspection, prescribed safety equipment in a way that is reasonable having regard to the nature of the equipment.

*Examples of ways equipment may be made available for inspection—*

- bringing the prescribed safety equipment to the inspector for inspection
  - if the prescribed safety equipment is not easily transportable, identifying where the prescribed safety equipment is kept on the ship
- (2) When making a request under subsection (1), the shipping inspector must warn the owner or master that, under subsection (4), the owner's or master's failure to comply with the request without a reasonable excuse may be used as evidence that the ship is not equipped with the prescribed safety equipment.
  - (3) The owner or master of a ship must comply with a request made under subsection (1), unless the owner or master has a reasonable excuse for not complying with it.
  - (4) In a proceeding for an offence against section 44(1), evidence that a master or owner of a ship has failed to comply with a request made under subsection (1) without providing a reasonable excuse to the shipping inspector who made the request, is evidence that the ship is not equipped with the prescribed safety equipment.



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- (5) Subsection (1) does not limit the powers of shipping inspectors under sections 165 to 167 or any other provision of this Act.
- (6) In this section—
- prescribed safety equipment*, for a ship, means safety equipment with which the ship is required to be equipped under a regulation.

### **168 Power to seize after boarding ship or entering a vehicle**

A shipping inspector who boards a ship or enters a vehicle under this part may—

- (a) seize a thing in or on the ship or vehicle; or
- (b) after searching the ship or vehicle—seize the ship or vehicle;

if the inspector believes, on reasonable grounds, the thing, ship or vehicle is evidence of the commission of an offence against this Act.

### **169 Power to seize evidence from places**

- (1) A shipping inspector who enters a place under this part under a warrant may seize the evidence for which the warrant was issued.
- (2) A shipping inspector who enters a place under this part with the consent of the occupier may seize the particular thing for which the entry was made if the inspector believes on reasonable grounds the thing is evidence of an offence against this Act.
- (3) A shipping inspector who enters a place under this part may also seize another thing if the inspector believes on reasonable grounds—
  - (a) the thing is evidence of the commission of an offence against this Act; and
  - (b) the seizure is necessary to prevent—

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- (i) the concealment, loss, death or destruction of the thing; or
- (ii) the use of the thing in committing, continuing or repeating the offence.

## **170 Procedure after thing seized**

- (1) As soon as practicable after a thing (including a ship or vehicle) is seized by a shipping inspector under this part, the inspector must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must—
  - (a) leave the receipt at the place where the thing was seized; and
  - (b) ensure the receipt is left in a reasonably secure way in a conspicuous position.
- (3) The inspector must allow a person who would be entitled to the seized thing if it were not in the inspector's possession—
  - (a) to inspect it; or
  - (b) if it is a document—to take extracts from it or make copies of it.
- (4) The inspector must return the seized thing to the person at the end of—
  - (a) 6 months; or
  - (b) if a prosecution for an offence involving it is started within 6 months—the prosecution for the offence and any appeal from the prosecution.
- (5) Despite subsection (4), the inspector must return the seized thing to the person immediately the inspector stops being satisfied its retention as evidence is necessary.
- (6) However, the inspector may keep the seized thing as mentioned in subsection (4) if the inspector believes, on

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reasonable grounds, that its continued retention is necessary to prevent its use in committing an offence against this Act.

**171 Direction if shipping inspector reasonably believes ship is not safe or can not be operated safely**

- (1) This section applies if a shipping inspector reasonably believes that life may be endangered because—
  - (a) a ship that is being, or is intended to be, operated is not safe; or
  - (b) a ship can not be operated safely.
- (2) To allow the ship to be further inspected and, if necessary, surveyed, the shipping inspector may give a written direction to the owner or master of the ship—
  - (a) if it is reasonable to require the ship to be inspected at an anchorage, berth, mooring or place on land—to take the ship to the anchorage, berth, mooring or place on land, as stated in the direction; or
  - (b) in any other case—to keep the ship at the ship's current anchorage, berth, mooring or place on land, as stated in the direction, for a period of time stated in the direction.
- (3) The directed person for the ship must comply with the direction.

Maximum penalty—200 penalty units.

- (4) For subsection (3), if a person is required to hold a licence of a particular class to operate the ship and the directed person does not hold the licence, the directed person must comply with the direction by causing a person who holds the licence to take the ship to the anchorage, berth or mooring as stated in the direction.
- (5) In this section—

***directed person***, for a ship, means either of the following to whom a direction is given under subsection (2)—

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- (a) the ship's owner;
- (b) the ship's master.

## **172 Shipping inspector may direct ship is surveyed and order repairs**

- (1) This section applies to a ship mentioned in section 171(1)(a) or (b), whether or not a direction under section 171(2)(a) has been given to the owner or master of the ship.
- (2) A shipping inspector may board the ship, inspect it and, if the inspector considers necessary, give a direction to the owner or master that the ship be surveyed as specified by the inspector.
- (3) If the shipping inspector is satisfied that life may be endangered because of the state of the ship, the shipping inspector may, by written direction, order the owner or master—
  - (a) not to operate the ship until specified works are carried out to the ship or the ship is provided with specified equipment; or
  - (b) to operate the ship only under specified conditions that the shipping inspector considers appropriate for its safe operation.
- (4) An owner or a master to whom a direction under this section is given must comply with the direction.  
Maximum penalty—500 penalty units or 1 year's imprisonment.
- (5) However, if a contravention of subsection (4) causes the death of, or grievous bodily harm to, a person, the owner or master commits an indictable offence and is liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.

## **172AA Shipping inspector may declare that ship is unseaworthy and must not be operated**

- (1) This section applies if a shipping inspector reasonably believes a ship is unseaworthy.

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- (2) By written notice attached to the ship, the shipping inspector may declare the ship is unseaworthy and must not be operated, other than in a way approved by the shipping inspector.
  - (3) A person must not contravene a declaration under subsection (2).  
Maximum penalty—200 penalty units.
  - (4) If the identity of the owner or master of the ship is known to the shipping inspector, the shipping inspector must give the owner or master a copy of the declaration.
  - (5) Also, the shipping inspector may, by written direction to the owner or master of the ship, require the owner or master to remove the ship from Queensland waters within a period stated in the direction and in a way approved by the shipping inspector.
  - (6) A person given a direction under subsection (5) must comply with the direction, unless the person has a reasonable excuse.  
Maximum penalty—200 penalty units.
  - (7) If the identity of the owner or master of the ship is not known to the shipping inspector, the ship is taken to be abandoned property for the purposes of section 175A.

## **172A Other directions**

- (1) This section applies if a shipping inspector finds—
  - (a) a person operating a ship that—
    - (i) is not registered; or
    - (ii) is registered, but is operating in waters beyond the waters in which the ship is authorised to operate under its registration; or
  - (b) a person operating a ship as its master, or acting as a crew member of the ship, and the person is not appropriately licensed; or
  - (c) a person operating a ship that—

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- (i) is required by a regulation to be equipped with safety equipment for the waters in which the ship is being operated; and
  - (ii) is not equipped with the safety equipment.
- (2) If subsection (1)(a)(i) or (b) applies, the inspector may, by written notice, require the master of the ship—
  - (a) to take the ship to a reasonable anchorage, berth or mooring stated in the notice (*stated destination*) within the reasonable time stated in the notice; and
  - (b) to not operate the ship for any purpose other than taking it to the stated destination.
- (3) If subsection (1)(a)(ii) applies, the inspector may, by written notice, require the master of the ship—
  - (a) to take the ship to waters in which it is authorised to operate under its registration (*operating waters*) within the reasonable time stated in the notice; and
  - (b) to not operate the ship for any purpose other than taking it to the operating waters.
- (3A) If subsection (1)(c) applies, the inspector may, by written notice, require the master of the ship—
  - (a) to take the ship to waters for which the ship has the required safety equipment (also *operating waters*) within the reasonable time stated in the notice; and
  - (b) to not operate the ship for any purpose other than taking it to the operating waters.
- (4) The master must comply with a requirement under subsection (2), (3) or (3A), unless the master has a reasonable excuse.  
Maximum penalty—200 penalty units.
- (5) If a master takes a ship to a stated destination as required under subsection (2)—
  - (a) the master does not contravene section 57; or
  - (b) the master or crew member does not contravene section 61(1) or (2);

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while operating the ship to take it to the destination.

- (6) If a master takes a ship to its operating waters as required under subsection (3), the master does not contravene section 57 while operating the ship to take it to the waters.
- (6A) If a master takes a ship to its operating waters as required under subsection (3A), the master does not contravene section 44 while operating the ship to take it to the waters.
- (7) If a master complies with a requirement under subsection (2), (3) or (3A), the requirement ceases to have effect when the ship reaches the stated destination or operating waters.
- (8) A notice under subsection (2), (3) or (3A) must include a brief statement of the grounds for giving the notice.
- (9) In this section—  
*safety equipment* see section 44(3).

## **Division 4                      Other enforcement powers of shipping inspectors**

### **173      Power to require name and address**

- (1) A shipping inspector may require a person to state the person's name and address if the inspector—
  - (a) finds the person committing an offence against this Act;  
or
  - (b) finds the person in circumstances that lead, or has information that leads, the inspector to suspect on reasonable grounds the person has just committed an offence against this Act.
- (2) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.
- (3) The inspector may require the person to give evidence of the correctness of the person's name or address if the inspector

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suspects, on reasonable grounds, that the name or address given is false.

- (4) A person must comply with a shipping inspector's requirement under subsection (1) or (3), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

- (5) The person does not commit an offence against this section if—
- (a) the shipping inspector required the person to state the person's name and address on suspicion of the person having committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

#### **174 Power to require information from certain persons**

- (1) This section applies if a shipping inspector suspects, on reasonable grounds—
- (a) an offence against this Act has happened; and
- (b) a person may be able to give information about the offence.
- (2) The shipping inspector may require the person to give information about the offence.
- (3) When making the requirement, the shipping inspector must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.
- (4) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

- (5) It is a reasonable excuse for the person to fail to give information if giving the information might tend to incriminate the person.
- (6) The person does not commit an offence against this section if the information sought by the shipping inspector is not in fact relevant to the offence.



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## **175 Power to require production of documents**

- (1) A shipping inspector may require a person to produce a document required to be kept by the person under this Act to the inspector for inspection.
- (2) The person must produce the document, unless the person has a reasonable excuse for not producing it.  
Maximum penalty—40 penalty units.
- (3) The shipping inspector may keep the document to take an extract from it or make a copy of it.
- (4) The shipping inspector must return the document to the person as soon as practicable after taking the extract or making the copy.

## **Division 4A Removing abandoned property**

### **175A Removing abandoned property**

- (1) This section applies if a shipping inspector reasonably believes that a ship, part of a ship or other property is abandoned property.
- (2) The inspector may seize the abandoned property and remove it to a place the inspector decides is appropriate.
- (3) Before seizing and removing the abandoned property, the inspector must—
  - (a) if practicable, attach to the abandoned property an intention to seize and remove notice in the approved form (*seizure notice*); and
  - (b) publish the seizure notice in a newspaper circulating in the locality where the abandoned property is.
- (4) A seizure notice must include the following particulars—
  - (a) the date the notice is given;
  - (b) a description of the abandoned property;
  - (c) where and when the abandoned property was found;

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- (d) a time, not less than 28 days after the date of the notice, after which, if no one claims the abandoned property, the inspector may seize and remove it to the place stated in the notice;
  - (e) a statement to the effect of subsection (5).
- (4A) If the shipping inspector is reasonably satisfied about either of the following, the shipping inspector may immediately seize and remove the abandoned property without complying with subsection (3)—
- (a) the abandoned property is a hazard to ships or navigation or may cause damage to the environment;
  - (b) before a seizure notice may be published in a newspaper or a time required to be stated in a seizure notice, the abandoned property may become a hazard to ships or navigation or cause damage to the environment.
- (4B) If the shipping inspector seizes and removes the abandoned property under subsection (4A), the shipping inspector must publish the following information in a notice in a newspaper circulating in the locality from where the abandoned property was seized—
- (a) a description of the abandoned property;
  - (b) where and when the abandoned property was found;
  - (c) a statement that the abandoned property was immediately seized and removed;
  - (d) information about the place to where the abandoned property has been removed;
  - (e) a statement to the effect of subsection (5).
- (5) Having regard to the abandoned property's value and condition, the shipping inspector may sell it by public auction or destroy it if—
- (a) no one claims the abandoned property within the time stated in a seizure notice and the shipping inspector seizes and removes the abandoned property; or

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- (b) no one claims the abandoned property within 28 days after a notice under subsection (4B) is published.
- (6) The proceeds from a sale of the abandoned property must be applied as follows—
- (a) firstly, in payment of the expenses of the sale;
  - (b) secondly, in payment of the costs of seizing, removing and storing the abandoned property and the seizure notice;
  - (c) thirdly, in payment of the balance to the owner of the abandoned property, or if the owner can not be found, to the consolidated fund.
- (7) However, if the proceeds of the sale of the abandoned property are insufficient to cover the amounts mentioned in subsection (6)(a) and (b), the amount by which the proceeds are insufficient is a debt payable to the State—
- (a) if the abandoned property is a ship or part of a ship and the owner or master of the ship is known—jointly and severally by the owner and master of the ship; or
  - (b) if the abandoned property is not a ship or part of a ship and the owner is known—by the owner of the abandoned property; or
  - (c) if the owner of the abandoned property is not known but a person was registered under an Act as its owner at the time of the abandonment, loss or stranding—the registered person.
- (7A) A secured party can not enforce any security interest in the proceeds of sale against an entity to whom an amount is payable under subsection (7)(a) or (b).
- (8) In this section—

***abandoned property*** means a ship, part of a ship, or other property, that is abandoned, lost or stranded in Queensland waters or on land adjacent to Queensland waters.

*Examples of land adjacent to Queensland waters—*

mudflats, banks of rivers, bays

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*property* does not include land or an interest in land.

*secured party* has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 10.

*security interest* has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 12.

## **Division 5                    Other enforcement matters**

### **176    False or misleading statements**

A person must not state anything to a shipping inspector that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

### **177    False or misleading documents**

- (1) A person must not give a shipping inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) informs the shipping inspector, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

### **178    Compensation**

- (1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part.
- (2) Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

### **179 Shipping inspector to give notice of damage**

- (1) A shipping inspector who, in the exercise of a power under this part, damages anything must promptly give written notice of the particulars of the damage.
- (2) The notice must be given—
- (a) if the thing is a ship or is on a ship—to the ship’s master; or
  - (b) in any other case—to the person who appears to the inspector to be the owner of the thing.
- (3) If, for any reason, it is not practicable to comply with subsection (2), the shipping inspector must—
- (a) leave the notice at the place where the damage happened; and
  - (b) ensure the notice is left in a reasonably secured way in a conspicuous position.

### **180 Consent to entry**

- (1) This section applies if a shipping inspector intends to seek the consent of an occupier of a place to the entry of the place by the inspector under this part.
- (2) Before seeking the consent, the inspector may inform the occupier that the occupier may refuse to give the consent.
- (3) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.

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- (4) The acknowledgement must—
  - (a) state the occupier was informed of the occupier's right to refuse to give the consent; and
  - (b) state the occupier gave the inspector consent under this part—
    - (i) to enter the place; and
    - (ii) to exercise the powers mentioned in section 167 (Shipping inspector's general powers for ships, vehicles and places); and
  - (c) specify the time and date when the consent was given.

## **181 Evidence of consent**

- (1) This section applies to a proceeding if—
  - (a) a question arises whether an occupier of a place consented to the entry of the place by a shipping inspector under this part; and
  - (b) an acknowledgement under section 180 (Consent to entry) is not produced in evidence.
- (2) In a proceeding to which this section applies, the court may presume the occupier did not consent unless the contrary is proved.

## **182 Obstruction of shipping inspectors**

- (1) A person must not obstruct a shipping inspector in the exercise of a power, unless the person has a reasonable excuse.  
Maximum penalty—200 penalty units.
- (2) If a person has obstructed a shipping inspector, the inspector must—
  - (a) warn the person it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and

- (b) identify the act or omission that the inspector considers is the obstruction; and
  - (c) tell the person that if the person continues to obstruct the shipping inspector, the shipping inspector may ask a police officer to help the shipping inspector exercise the power.
- (3) Subsection (2) does not apply to a shipping inspector who is a police officer.

### **183 Impersonation of shipping inspector**

A person must not pretend to be a shipping inspector.

Maximum penalty—40 penalty units.

## **Part 13A Securing compliance with Act**

### **Division 1 Purpose**

#### **183A Purpose of pt 13A**

- (1) The purpose of this part is to provide for alternative ways of ensuring compliance with this Act.
- (2) Division 2 provides for enforcement orders and interim enforcement orders if a person has failed to comply with any of the following—
  - (a) a direction or requirement given to the person by the general manager, a harbour master or a shipping inspector;
  - (b) a division 3 undertaking given by the person to the general manager.
- (3) Division 3 provides for undertakings.

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## **Division 2                      Enforcement orders and interim enforcement orders**

### **183B    Proceeding for enforcement order or interim enforcement order**

A prescribed applicant may bring a proceeding in the District Court for any of the following—

- (a) an enforcement order;
- (b) an order cancelling or amending an enforcement order or interim enforcement order.

### **183C    Making enforcement order**

- (1) The District Court may make an enforcement order if the court is satisfied about any of the following—
  - (a) a notice offence has been committed or, unless an enforcement order is made, will be committed;
  - (b) a division 3 undertaking has been contravened or, unless an enforcement order is made, will be contravened.
- (2) Subsection (1) applies whether or not there has been a prosecution for the notice offence.

### **183D    Making interim enforcement order**

- (1) If a prescribed applicant has brought a proceeding for an enforcement order but the District Court has not decided the proceeding, the court may make an interim enforcement order if it is satisfied it would be appropriate to make the interim enforcement order.
- (2) The District Court may make the interim enforcement order on application by the prescribed applicant or on its own initiative.
- (3) An interim enforcement order may be made subject to conditions.



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**183E Effect of order**

- (1) An enforcement order or an interim enforcement order may direct a person (the *respondent*) to do 1 or more of the following—
  - (a) to stop an activity that constitutes, or will constitute, a notice offence or a contravention of a division 3 undertaking;
  - (b) not to start an activity that will constitute a notice offence or a contravention of a division 3 undertaking;
  - (c) to do anything required to stop committing a notice offence, or a contravention of a division 3 undertaking, including, for example, requiring the repair, demolition or removal of a ship or a part of a ship.
- (2) If an enforcement order or an interim enforcement order is made as mentioned in subsection (1), the District Court may do either or both of the following—
  - (a) direct the respondent to give a security bond to the State for a stated period for a matter mentioned in the enforcement order or interim enforcement order;
  - (b) make another order the court considers appropriate.
- (3) An enforcement order or interim enforcement order—
  - (a) may be in terms the District Court considers appropriate to secure compliance with this Act; and
  - (b) must state the time by which the order is to be complied with.
- (4) A person who contravenes an enforcement order or interim enforcement order commits an offence against this Act.  
Maximum penalty—500 penalty units or 1 year’s imprisonment.
- (5) The District Court may order the forfeiture to the State of all or part of the security bond given by the respondent under subsection (2)(a) if—

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- (a) a prescribed applicant applies to the court for an order for the forfeiture of all or part of the security bond; and
- (b) the court is satisfied that the respondent contravened the enforcement order or interim enforcement order during the period for which the security bond was given, whether or not the respondent has been prosecuted for an offence against subsection (4).

### **183F Powers of District Court about enforcement order or interim enforcement order**

- (1) The District Court's power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised whether or not—
  - (a) it appears to the court that the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
  - (b) the person has previously engaged in an activity of the kind; or
  - (c) it appears to the court a marine incident may happen if the person engages, or continues to engage, in the activity.
- (2) The District Court's power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not—
  - (a) it appears to the court that the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
  - (b) the person has previously failed to do a thing of the kind; or
  - (c) it appears to the court a marine incident may happen if the person fails, or continues to fail, to do the thing.
- (3) The District Court may cancel or amend an enforcement order or interim enforcement order.

- (4) The District Court's power under this section is in addition to its other powers.

### **183G No undertaking as to damages or costs may be required**

To remove any doubt, it is declared that no undertaking as to damages or costs may be required of a prescribed applicant or the State in relation to an enforcement order or interim enforcement order.

### **183GA Further power of District Court if enforcement order is contravened**

- (1) If the respondent contravenes an enforcement order, the District Court may, by further order, authorise the prescribed applicant to take the action stated in the further order.
- (2) The District Court's power under this section is in addition to its other powers.
- (3) In this section—

*prescribed applicant* means the prescribed applicant for the enforcement order.

*respondent* means the person against whom the enforcement order is made.

### **183GB Recovery by State of expenses of taking authorised action**

- (1) This section applies if the prescribed applicant incurs expense, whether the expense is the prescribed applicant's expense or the State's expense, in taking the authorised action.
- (2) The State may recover the amount of the expense, as a debt, from the persons liable for the expense.
- (3) If, under subsection (2), more than 1 person is liable for the same expense, the persons who are liable for the expense are jointly and severally liable.

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### **183GC Recovery by other persons of damages in particular circumstances**

If, in taking the authorised action, the prescribed applicant attaches a ship (the *first ship*) to another ship or a buoy, wharf or pile, this Act does not prevent the owner or master of the other ship, or the owner of the buoy, wharf or pile, from recovering damages for injury or loss suffered, because of the attachment, from the owner or master of the first ship.

## **Division 3                      Undertakings**

### **183H General manager may seek division 3 undertaking**

- (1) This section applies if the general manager reasonably believes a person has contravened, will contravene or will be involved in a contravention of, this Act.
- (2) The general manager may, by written notice given to the person—
  - (a) state the act or omission the general manager believes is, or will constitute, the contravention or involvement with the contravention; and
  - (b) ask the person to give the general manager a written undertaking under this division (a *division 3 undertaking*) that the person will not commit, continue to commit or repeat the act or omission.

### **183I Undertaking about other matter**

Without limiting section 183H, the general manager may accept a division 3 undertaking given by a person for this division about anything for which the chief executive, the general manager or a harbour master has a function or power under this Act.

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### **183J Variation and withdrawal of division 3 undertaking**

- (1) This section applies if the general manager has accepted a division 3 undertaking given by a person.
- (2) The person may vary or withdraw the division 3 undertaking only if the general manager agrees to the variation or withdrawal.
- (3) The general manager may—
  - (a) vary the division 3 undertaking only if the person agrees to the variation; or
  - (b) withdraw the division 3 undertaking only if the general manager reasonably believes either of the following—
    - (i) before the division 3 undertaking was accepted, the person contravened this Act in a way unknown to the general manager and, had the general manager known about the contravention, he or she would not have accepted the division 3 undertaking;
    - (ii) the division 3 undertaking is no longer necessary.
- (4) If a division 3 undertaking is varied or withdrawn under this section, the general manager must give written notice of the variation or withdrawal to the person.
- (5) The variation or withdrawal takes effect when written notice of the variation or withdrawal is given to the person.

### **183K Enforcement of division 3 undertaking**

- (1) This section applies if the general manager reasonably believes a person—
  - (a) has contravened a term of a division 3 undertaking; or
  - (b) will contravene a term of a division 3 undertaking, unless an enforcement order is made.
- (2) The general manager may apply to the District Court for an enforcement order under division 2.

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### **183L Register of division 3 undertakings**

- (1) The general manager must, in any way the general manager reasonably considers appropriate, keep a register of each division 3 undertaking given to the general manager by a person under this division.
- (2) Also, the general manager must ensure the register is available for public inspection, without charge, at a place prescribed under a regulation during normal working hours.

## **Part 14 Orderly control over ships**

### **Division 1 General**

#### **184 Illegal boarding of or remaining alongside or hovering near a ship**

A person must not go on board, remain alongside or hover near a ship in a pilotage area or port unless the person—

- (a) has the permission of the ship's owner or master or a person authorised by the owner or master; or
- (b) is there on official business under an Act; or
- (c) has another reasonable excuse.

Maximum penalty—40 penalty units.

#### **185 Offence of failing to leave a ship**

A person must not remain on board a ship if—

- (a) the person is not entitled to be on board it; and
- (b) the owner or master or a person authorised by the owner or master asks the person to leave the ship;

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unless the person has a reasonable excuse for remaining on board.

Maximum penalty—40 penalty units.

## **186 Unlawful interference with ship**

- (1) A person must not unlawfully interfere with a ship.

Maximum penalty—500 penalty units or imprisonment for 1 year.

- (2) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, another person, the person commits an indictable offence and is liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.
- (3) A person unlawfully interferes with a ship if the person wilfully, and without authority, justification or excuse, detrimentally interferes with the safe operation of the ship.

*Example of detrimental interference—*

A person removes, alters or damages the ship's safety equipment.

## **186A Chief executive (fisheries) must disclose information**

- (1) This section applies if—
- (a) the chief executive (transport) is satisfied, on grounds that are reasonable in the circumstances, relevant information held by the chief executive (fisheries) would help in enhancing navigational safety and minimising the risk of marine incidents; and
  - (b) the chief executive (transport) asks the chief executive (fisheries) for the information.
- (2) The chief executive (fisheries) must disclose the relevant information to the chief executive (transport).
- (3) Subsection (2) applies despite the *Fisheries Act 1994*, including section 217A of that Act.

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- (4) The chief executive (transport) must not disclose relevant information obtained under subsection (1) unless—
- (a) the chief executive (transport) reasonably considers the disclosure is necessary to—
    - (i) prevent a marine incident; or
    - (ii) enable an entity to provide help to a person or ship in distress at sea; or
  - (b) it is authorised by the person to whom the information relates; or
  - (c) the disclosure is required by a court or tribunal in a proceeding in which the information is relevant.
- (5) Despite subsection (4)(c), relevant information given to the chief executive (transport) under this section is not admissible in any proceedings under this Act against the person to whom the information relates without the person's consent.
- (6) In this section—

*chief executive (fisheries)* means the chief executive of the department in which the *Fisheries Act 1994* is administered.

*chief executive (transport)* means the chief executive of the department in which this Act is administered.

*relevant information* means data sent from VMS equipment, within the meaning of the *Fisheries Act 1994*, required by an authority under that Act to be carried on a boat.

## Division 2                      Passenger carrying ships

### 187      Application of division

A provision of this division applies only to a ship to which this division, or the provision, is applied by regulation.

### 188      Exclusion of person from ship

- (1) In this section—



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*master* includes a person authorised by the master.

- (2) A ship's master may refuse to allow a person to board a ship if the master is of the opinion, on reasonable grounds, that the person may annoy or injure other persons on the ship because of the person's intoxicated condition or disorderly or violent behaviour.
- (3) A ship's master may refuse to allow a person to board a ship for another reasonable reason (including, for example, that the ship was full).
- (4) A ship's master may ask a person to leave the ship at a convenient port if the master is of the opinion, on reasonable grounds, that the person is likely to annoy or injure, or further annoy or injure, persons on the ship because of the person's intoxicated condition or disorderly or violent behaviour.

## **189 Miscellaneous offences by passengers etc.**

- (1) In this section—

*master* includes a person authorised by the master.

- (2) A person must not board or attempt to board a ship after the ship's master has, under section 188(2) or (3) (Exclusion of person from ship), refused to allow the person to board the ship.
- (3) A person who is required under section 188(4) to leave a ship must leave the ship.
- (4) A person on a ship must not annoy or injure, or continue to annoy or injure, anyone else on the ship after being warned not to do so by the ship's master or a member of the crew.

Maximum penalty—40 penalty units.

## **190 Obstruction of master or crew**

- (1) A person must not obstruct the master or a crew member of a ship in the operation of the ship or the performance of any duty on or about the ship, unless the person has a reasonable excuse.

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Maximum penalty—500 penalty units or imprisonment for 1 year.

(2) In this section—

*obstruct* includes a contravention of a direction given by the master or crew member about safety.

### **191 Arrest by ship's master**

(1) A person found committing an offence against this part may be arrested without warrant by the master of the ship concerned.

(2) A person arrested by a master must be placed, as soon as practicable, in the custody of a police officer to be promptly brought before a Magistrates Court, released under the *Bail Act 1980* or released by the officer without charge.

## **Part 14A General manager's powers of direction**

### **191A Direction to master about operation of ship in relation to pilotage area**

(1) The general manager may give a direction under this section only if the general manager is satisfied that exceptional circumstances exist to justify the general manager's intervention in the public interest.

*Examples of exceptional circumstances—*

- circumstances on board a ship that pose a serious risk to public health including, for example, a contagious disease
- circumstances where a natural disaster has affected a community and facilitating the off-loading of equipment or materials from a ship would assist the community

(2) The general manager may direct the master of a ship to navigate or otherwise operate the ship in relation to a pilotage

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area in a stated way, including, for example, in any of the following ways—

- (a) not to cause the ship to enter the pilotage area;
  - (b) to cause the ship to enter the pilotage area in a stated way;
  - (c) to navigate the ship in the pilotage area in a stated way;
  - (d) to anchor, berth or moor the ship at a stated place in, or adjacent to, the pilotage area;
  - (e) to move the ship from an anchorage, berth or mooring in the pilotage area;
  - (f) to cause the ship to leave the pilotage area or to leave the pilotage area in a stated way.
- (3) The direction may be given orally, in writing or in another way.
- (4) Without limiting subsection (3)—
- (a) subject to the direction of the general manager, an oral direction may be communicated on the general manager's behalf by a harbour master, an agent of a harbour master or a shipping inspector—
    - (i) personally to a person; or
    - (ii) by phone, radio or or another form of electronic communication; or
    - (iii) by megaphone or another form of distance communication; or
  - (b) a written direction may be given by way of a written notice published or otherwise reasonably made available or known to any person to whom it applies, including, for example, by publication in a newspaper or by a fax or email; or
  - (c) a direction may be given in another way appropriate for the maritime environment by being published or otherwise reasonably made available or known to the master, including, for example, by use of flags or lights.

[s 191B]

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- (5) The direction may be given to another person in control of the ship if it is not practicable to give the particular direction to the ship's master.
- (6) A direction given under subsection (5) to a person in control of a ship, other than the ship's master, is taken to have been given to the ship's master.
- (7) In a proceeding, if an issue arises about whether a direction was given to a person, the party alleging the direction was given must prove that the person had, or reasonably ought to have had, knowledge of the direction.
- (8) A person must not contravene a direction given under this section, unless the person has a reasonable excuse for the contravention.

Maximum penalty—500 penalty units.

### **191B Direction to person in charge of a place**

- (1) This section applies if—
  - (a) the general manager gives a direction to the master of a ship under section 191A(2); and
  - (b) the direction requires the master of the ship to anchor, berth or moor the ship at a stated place in, or adjacent to, a pilotage area.
- (2) The general manager may direct the person in charge of the stated place in, or adjacent to, the pilotage area—
  - (a) to allow a ship to be berthed at the place or moved from the place; or
  - (b) to allow access through the place to and from the ship.
- (3) A person must comply with a direction under subsection (2), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—500 penalty units.

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## **Part 15 Proceedings**

### **Division 1 General**

#### **192 Jurisdiction preserved**

This part does not affect jurisdiction given to a court under another Act, including, for example, the *Justices Act 1886*, part 6 (Proceedings in case of simple offences and breaches of duty), division 1 (Venue) that deals with the venue of proceedings for simple offences and breaches of duty.

#### **193 Jurisdiction for offences**

To give jurisdiction under this Act in a proceeding for an offence, a court's jurisdiction includes the jurisdiction it would have if the offence were committed at the place where the charged person was arrested or served with the summons for the offence.

#### **194 Presumption of jurisdiction**

In a proceeding under this Act, if a question arises whether a ship is or is not within a provision of this Act, it must be presumed that the ship is within the provision unless the contrary is proved.

#### **195 Jurisdiction over ships lying or passing off the coast or in or near navigable waters**

- (1) If a district in which a court has jurisdiction is next to the coast or navigable water, the court's jurisdiction over—
- (a) a ship on or lying or passing off the coast or in or near the navigable water; and
  - (b) all persons on or belonging to the ship;
- includes the jurisdiction the court would have if the ship were in the district.

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- (2) More than 1 district in which a court has jurisdiction may satisfy the requirements under subsection (1) for jurisdiction over a ship.

### **196 Offences are summary unless expressly indictable etc.**

- (1) An offence against this Act is a summary offence, unless it is expressly provided to be an indictable offence.
- (2) In applying the *Justices Act 1886*, sections 161 (Mode of enforcement where no express provision made) and 161A (Mode of levying penalties, moneys or costs) to a proceeding for an offence against this Act committed by a person as the owner or master of a ship, the goods and chattels of the owner or master include the ship.

### **197 Proceedings for indictable offences**

- (1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
  - (a) by way of summary proceedings under the *Justices Act 1886*; or
  - (b) on indictment.
- (2) A magistrate must not hear an indictable offence summarily if—
  - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
  - (b) the magistrate considers that the charge should be prosecuted on indictment.
- (3) If subsection (2) applies—
  - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
  - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
  - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to

be evidence in the proceeding for the committal of the person for trial or sentence; and

- (d) before committing the person for trial or sentence the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).
- (4) The maximum penalty that may be summarily imposed for an indictable offence is 2500 penalty units or imprisonment for 18 months.

### **198 Limitation on who may summarily hear indictable offence proceedings**

- (1) A proceeding must be before a magistrate if it is a proceeding—
  - (a) for the summary conviction of a person on a charge for an indictable offence; or
  - (b) for an examination of witnesses for a charge for an indictable offence.
- (2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### **199 Limitation on time for starting summary proceedings**

- (1) A proceeding for an offence by way of summary proceeding under the *Justices Act 1886* must start within 2 years after—
  - (a) the commission of the offence; or
  - (b) the offence comes to the complainant's knowledge, but within 3 years after the commission of the offence;whichever is the later.
- (2) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the

[s 199A]

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complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

### **199A Court may make orders about compensation and other matters**

- (1) This section applies to a prosecution for an offence against this Act.
- (2) If the court finds the defendant has contravened a direction of a harbour master in contravention of this Act, the court may order the defendant to pay to the State the amount the State could have recovered under section 94(2).
- (3) If the court finds the defendant has unlawfully interfered with an aid to navigation, or moored a ship to an aid to navigation, in contravention of this Act and in a way that has damaged or destroyed the aid, the court may order the defendant to pay to the State—
  - (a) if the defendant is the master or owner of a ship that caused the damage or destruction—the amount the State could have recovered under section 107A(3); or
  - (b) otherwise—an amount for the expense of repairing and reinstating the aid to navigation.
- (4) An order under subsection (2) or (3) is in addition to any penalty or other order the court may make or impose under this Act.
- (5) In particular, this section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.
- (6) However, if a court makes an order under subsection (2) or (3) in relation to a defendant, the State can not recover an amount, under section 94(2) or 107A(3), from the defendant in relation to the same direction, or damage or destruction.



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**199B Court may make orders about apologies and other matters**

- (1) If a person is convicted of an offence against this Act, the court dealing with the matter may make an order under this section in addition to—
  - (a) any other penalty the court may impose under this Act, the *Penalties and Sentences Act 1992* or another Act; or
  - (b) any other order the court may make under this Act, the *Penalties and Sentences Act 1992* or another Act.
- (2) The court may order the defendant—
  - (a) on application only by the prosecution, to do 1 or more of the following—
    - (i) to conduct a stated advertising or education campaign to promote compliance with this Act;
    - (ii) to make a stated private apology or publish a stated public apology to persons affected by the contravention;
    - (iii) to operate a stated ship in a particular way, including putting a stated procedure or system in place for or on the ship to ensure compliance with this Act;
    - (iv) to repair, modify or replace a stated ship or part of a ship, or repair, modify, install or replace stated machinery or equipment on a stated ship, to ensure compliance with this Act;
    - (v) to start or stop a stated activity in relation to a stated ship;
    - (vi) not to own or operate any ship unless the general manager has given written consent for the ownership or operation; or
  - (b) to comply with another order the court considers appropriate.

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- (3) An order under this section is subject to any limitation of liability that may apply under a law of the State or the Commonwealth.

*Example—*

*Limitation of Liability for Maritime Claims Act 1989 (Cwlth)*

- (4) A person who contravenes an order under this section commits an offence against this Act.

Maximum penalty for subsection (4)—3500 penalty units or 2 years imprisonment.

## **200 Special provision for service of documents**

- (1) A document may be served on the master of a ship or a member of the ship's crew by leaving it—
- (a) if, at the time of service, there is a person on board who is apparently in charge of the ship—with the person after explaining to the person the purpose of the document; or
- (b) in any other case—in a reasonably secure way in a conspicuous position near the ship's controls.
- (2) If a document is required or permitted to be served on the master of a ship and there is no master or apparently there is no master, the document may be served on the owner of the ship.
- (3) A document is served on all owners of a ship if it is served on any person mentioned in section 9.

*Editor's note—*

Section 9 defines *owner*.

- (4) Nothing in this section affects—
- (a) the operation of another law that requires or permits service of a document other than as provided in this section; or
- (b) the power of a court or tribunal to authorise service of a document other than as provided in this section.

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## **200A Allegations of false or misleading statements or documents**

It is enough for a complaint for an offence against section 148, 149, 176, 177, 202T, 202U or 205 to state the statement made, or document given, was ‘false or misleading’ to the person’s knowledge, without specifying whether it was false or whether it was misleading.

## **201 Evidentiary provisions**

- (1) This section applies to a proceeding under this Act or another Act prescribed by regulation.
- (2) Unless a party, by reasonable notice, requires proof of—
  - (a) the appointment of the chief executive, the general manager, a harbour master or a shipping inspector; or
  - (b) the authority of the chief executive, the general manager, a harbour master or a shipping inspector to do anything under this Act;the appointment or authority must be presumed.
- (3) A signature purporting to be the signature of the chief executive, the general manager, a harbour master or a shipping inspector is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by the chief executive, the general manager, a harbour master or a shipping inspector and stating any of the following matters is evidence of the matter—
  - (a) a specified document is—
    - (i) an approval or a copy of an approval; or
    - (ii) a direction or decision, or a copy of a direction or decision, given or made under this Act; or
    - (iii) a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act;

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- (b) on a specified day, or during a specified period, a specified person was or was not the holder of an approval or a specified approval;
  - (c) a specified approval was or was not in force on a specified day or during a specified period;
  - (d) on a specified day, a specified approval—
    - (i) was suspended for a specified period; or
    - (ii) was cancelled;
  - (e) on a specified day, a specified person was given a specified direction under this Act;
  - (f) a specified fee or other amount is payable under this Act by a specified person and has not been paid.
- (5) A certificate purporting to be signed by the chief executive, the general manager or a shipping inspector certifying that a laser speed detection device (*device*) has been—
- (a) tested at a specified time—
    - (i) in accordance with the appropriate Australian Standard that was in force at the time; or
    - (ii) if there was no appropriate standard—in accordance with the manufacturer's specifications; and
  - (b) found to produce accurate results at the specified time; is evidence of the matters stated and evidence that the device was producing accurate results at the time of testing and for 1 year after the time.
- (6) A certificate purporting to be signed by a shipping inspector stating that a specified device was used by the inspector—
- (a) at a specified time; and
  - (b) in accordance with—
    - (i) the appropriate Australian Standard that was in force at the time; or

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- (ii) if there was no appropriate standard—the manufacturer’s specifications;
- is evidence of the matters stated.
- (7) If a defendant intends to challenge—
- (a) the accuracy of a device; or
  - (b) the time at which, or the way in which, the device was used;
- at the hearing of a charge against the defendant under an Act mentioned in subsection (1), the defendant must give written notice of the challenge to the prosecution (***challenge notice***).
- (8) The challenge notice must be—
- (a) signed by the defendant; and
  - (b) given at least 14 days before the day fixed for the hearing.
- (9) A statement in a complaint for an offence against this Act that a person is or is not, or was or was not, at any time or date stated in the complaint of, under or over a stated age is evidence of the matter stated, and in the absence of evidence to the contrary is conclusive evidence of the matter.

## **202 Conduct of company directors, employees or agents**

- (1) In this section—
- engaging*** in conduct includes failing to engage in conduct.
- representative*** means—
- (a) for a corporation—an executive officer, employee or agent of the corporation; or
  - (b) for an individual—an employee or agent of the individual.
- state of mind*** of a person includes—
- (a) the person’s knowledge, intention, opinion, belief or purpose; and

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- (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a corporation about particular conduct, it is enough to show—
  - (a) the conduct was engaged in by a representative of the corporation within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) Conduct engaged in for a corporation by a representative of the corporation within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been engaged in also by the corporation unless the corporation establishes it took reasonable precautions and exercised proper diligence to avoid the conduct.
- (4) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of an individual about particular conduct, it is enough to show—
  - (a) the conduct was engaged in by a representative of the individual within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (5) Conduct engaged in for an individual by a representative of the individual within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been engaged in also by the individual unless the individual establishes the individual took reasonable precautions and exercised proper diligence to avoid the conduct.

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## **Division 2                      Licence disqualifications,    cancellations and suspensions**

### **202A    Disqualifying person from holding licence and cancelling    or suspending current licence**

- (1) This section applies if—
  - (a) a person is convicted of an offence against—
    - (i) section 41, 43, 44, 57, 61, 186, 202J or 211; or
    - (ii) the *Transport Operations (Road Use Management) Act 1995*, section 79 or 80, or the Criminal Code, section 328A, that involved a ship used, being used or apparently about to be used in navigation and the person was the person in control of the ship; and
  - (b) at the time of the offence—
    - (i) the person was required under this Act to hold a licence to operate the ship; or
    - (ii) if the person had not held an authority or licence (however described) from the Commonwealth or another State, the person would have been required to hold a licence to operate the ship; and
  - (c) the court before which the person is convicted is satisfied the person should, in the interests of marine safety, be disqualified or further disqualified from holding or obtaining a licence.
- (2) On application by the prosecution or on its own initiative, the court may order—
  - (a) if the person is currently disqualified absolutely from holding a licence—from the time of the conviction, the person is again disqualified absolutely from holding or obtaining a licence; or
  - (b) if the person is currently disqualified from holding a licence for a stated time—

[s 202A]

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- (i) from the time of the conviction, the person is disqualified absolutely; or
    - (ii) from a time stated by the court, the person is disqualified for a stated time from holding or obtaining a licence; or
  - (c) otherwise—from the time of the conviction, the person is disqualified absolutely, or for a time stated by the court, from holding or obtaining a licence.
- (3) A court that makes an order under subsection (2) is a ***disqualifying court***.
- (4) In making an order under subsection (2), the disqualifying court must have regard to—
- (a) the nature of the offence; and
  - (b) the circumstances in which the offence was committed; and
  - (c) the real or potential danger to other persons operating or aboard ships and the public generally; and
  - (d) whether during the period of 5 years before the conviction, including any period before the commencement of this section, the person had been convicted of an offence mentioned in subsection (1)(a).
- (5) An order under subsection (2) is in addition to any other penalty the disqualifying court may impose, or other order the disqualifying court may make, under an Act.
- (6) It does not matter that the person for whom an order under subsection (2) is made—
- (a) was not present when the disqualifying court made its order; or
  - (b) was not called on to show cause why the order should not be made.



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## **202B Dealing with order under s 202A**

- (1) A relevant clerk of the disqualifying court must send a copy of an order under section 202A to the chief executive of the department in which this Act is administered.
- (2) The chief executive must send a copy of the order to the person for whom the order was made.

## **202C Licence cancelled when order made under s 202A**

- (1) If, at the time the disqualifying court makes an order under section 202A, the person for whom the order is made holds a licence, the licence, and any subsisting licence, is cancelled from the day the order is made.
- (2) The chief executive of the department must give written notice to the person stating that the person is required to give the chief executive the person's licence or marine licence indicator, and any subsisting licence, within 7 days after the day the notice is given to the person.
- (3) A person given a notice under subsection (2) must comply with the notice, unless the person has a reasonable excuse.  
Maximum penalty—20 penalty units.
- (4) Despite the cancellation of a licence under subsection (1), if the disqualification by the order under section 202A is suspended pending a decision on an appeal, as mentioned in section 204(5), the licence, and any subsisting licence, is revived during the suspension of the disqualification.

## **Division 3 Restricted licences**

### **202D Restricted licence for disqualified person**

- (1) This section applies if a person—
  - (a) is convicted before a court, by summary proceeding under the *Justices Act 1886*, of an offence against—
    - (i) section 41, 43, 44, 57, 61, 186, 202J or 211; or

[s 202D]

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- (ii) the *Transport Operations (Road Use Management) Act 1995*, section 79, other than section 79(1) or (2D); or
  - (iii) the *Transport Operations (Road Use Management) Act 1995*, 80(5A); and
- (b) by order of the court (a ***disqualification order***) is disqualified under section 202A from holding or obtaining a licence.
- (2) The court may, if it has received an application in the approved form from the person, make an order that the person be issued with a restricted licence.
- (3) The application may only be made—
  - (a) at the summary proceeding; and
  - (b) before the court makes the disqualification order.
- (4) For the application—
  - (a) the court may hear evidence relating to all matters relevant to the application; and
  - (b) the applicant and other persons may be called as witnesses; and
  - (c) if the court requires it, the applicant must submit himself or herself as a witness.
- (5) The order may only be made—
  - (a) at the summary proceeding; and
  - (b) in conjunction with the disqualification order.
- (6) If the court grants the application, the court must make an order directing a restricted licence be granted to the applicant during the period of the applicant's disqualification subject to restrictions, as stated in the order, that—
  - (a) restrict the use, under the restricted licence, of a ship by the applicant to stated circumstances directly connected with the applicant's means of earning his or her livelihood; and

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- (b) may include, but are not limited to, 1 or more of the following—
    - (i) the class of ship that may be operated;
    - (ii) the purpose for which a ship may be operated;
    - (iii) the times at which, or period during which, a ship may be operated;
    - (iv) the waters in which a ship may be operated.
  - (7) To remove any doubt, it is declared that if the court makes an order under subsection (2), the applicant—
    - (a) is disqualified from holding or obtaining a licence other than the restricted licence; and
    - (b) may not operate a ship, for the operation of which a licence is required, during the period of the disqualification unless the applicant applies for and obtains the restricted licence the court orders may be granted.
  - (8) An order under subsection (2) may relate only to a restricted licence that is of the same type and class as the licence held by the applicant immediately before the disqualification in relation to which the application is made.

## **202E Other limitations on ordering a restricted licence**

- (1) An application for an order under section 202D for the grant of a restricted licence must not be granted unless the applicant satisfies the court that—
  - (a) the applicant is a fit and proper person to hold a restricted licence, having regard to the safety of other operators of ships and the public generally; and
  - (b) a refusal would cause extreme hardship to the applicant, or the applicant's family, by depriving the applicant of his or her means of earning his or her livelihood; and
  - (c) the disqualification for which the application is made resulted from the applicant's conviction for an offence committed when the applicant held a licence; and

[s 202E]

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- (d) the applicant was the holder of a licence immediately before the disqualification in relation to which the application is made; and
  - (e) none of the circumstances mentioned in subsection (2) apply to the applicant.
- (2) For subsection (1)(e), the application must not be granted in any of the following circumstances—
- (a) if, within 5 years before making the application for the order under section 202D including any period before the commencement of this section, either of the following happened—
    - (i) the applicant was disqualified from holding or obtaining a licence;
    - (ii) a licence held by the applicant was suspended or cancelled;
  - (b) if the applicant was previously convicted—
    - (i) in Queensland of an offence mentioned in section 202A(1)(a); or
    - (ii) elsewhere of any offence that, if committed in Queensland, would be an offence mentioned in section 202A(1)(a);within a period of 5 years before the conviction that results in the disqualification for which the application is made, including any period before the commencement of this section;
  - (c) if the disqualification for which the application is made resulted from a conviction of the applicant for any of the following—
    - (i) an offence committed when the applicant was engaged in an activity directly connected with the applicant's means of earning his or her livelihood;
    - (ii) an offence committed by the applicant operating a ship when not holding a licence the applicant was required to hold;

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- (iii) an offence committed at a time when the applicant was the holder of a restricted licence;
  - (d) if—
    - (i) the disqualification for which the application is made resulted from the applicant's conviction for an offence against the *Transport Operations (Road Use Management) Act 1995*, section 79(1F) or (2); and
    - (ii) the applicant is a person to whom section 79(2D) of that Act would have applied apart from the fact that the person was over the general alcohol limit under that Act.
  - (3) For subsection (1)(b), if the applicant is not self-employed, the applicant must produce to the court an affidavit made by the applicant's employer confirming the applicant would be deprived of the applicant's means of earning his or her livelihood if the application is refused.
  - (4) In subsection (2)(a), the reference to a disqualification, suspension or cancellation does not include—
    - (a) a disqualification, suspension or cancellation that was set aside on appeal; or
    - (b) a disqualification, suspension or cancellation because of the applicant's mental or physical disability.

## **202F Consideration of order for restricted licence when making order disqualifying a person**

A court, in considering an order it proposes to make under section 202A(2) disqualifying a person from holding or obtaining a licence absolutely or for a period, must have regard to any other order it proposes to make under section 202D.

## **202G Application for, and grant of, restricted licence**

- (1) This section applies if—

[s 202H]

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- (a) an order is made under section 202D; and
  - (b) the person for whom the order is made makes an application under a regulation for a restricted licence of the type stated in the order.
- (2) The person who, under a regulation, has the power of granting a licence of the type for which the application is made (*licensing entity*) must grant to the person a restricted licence of the type stated in the order subject to—
- (a) the restrictions imposed by the disqualifying court's order made under section 202D; and
  - (b) other terms, provisions, conditions, limitations or restrictions, consistent with the order, as may be stated on the licence under this Act.

## **202H Duration of restricted licence**

- (1) In the first instance, a restricted licence must be granted for—
- (a) if the licence that was cancelled under section 202C(1) included a date for the expiry of the licence—the period remaining until the expiry date; or
  - (b) otherwise—1 year.
- (2) If a restricted licence is renewed during the period of the cancellation, the restricted licence must be renewed subject to the restrictions stated in the order last made whether under section 202D or 202K.
- (3) A restricted licence remains in force until it expires or is cancelled, suspended or surrendered under this Act.

## **202I Regulation-making power in relation to restricted licence**

- (1) A regulation may be made about restricted licences.
- (2) Without limiting subsection (1), a regulation about restricted licences may make provision about authorising the chief executive or the general manager to cancel or suspend a

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restricted licence even though the restricted licence is ordered to be granted under an order of a disqualifying court.

## **202J Offence of operating ship other than under a restricted licence**

A person who is the holder of a restricted licence must not operate a ship unless—

- (a) the person operates the ship under the restricted licence; or
- (b) a licence is not required by anyone to operate the ship.

Maximum penalty—20 penalty units.

## **202K Variation of restrictions**

- (1) This section applies if, after a disqualifying court makes an order under section 202D or this section, the circumstances connected with the disqualified person's means of earning his or her livelihood have changed.
- (2) The disqualified person (the *applicant*) may apply, in the approved form, to a Magistrates Court exercising jurisdiction at the place where the applicant resides for an order to vary restrictions currently applying to the applicant's restricted licence by an order of a court.
- (3) For the application, the following must give evidence relating to all matters relevant to the application and must be liable to cross-examination—
  - (a) the applicant, if required by the court to submit himself or herself as a witness; and
  - (b) any other person, if called as a witness.
- (4) At least 28 days before the date of the hearing for the application, the applicant must give written notice about the application, including the time and place at which the application is to be heard, to the chief executive in a way prescribed under a regulation.

[s 202K]

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- (5) The chief executive is entitled to appear and be heard and to give and produce evidence at the hearing of the application, including for or against the grant of the application.
- (6) Also, the chief executive is entitled to be represented at the hearing.

*Note—*

The chief executive may be represented by an Australian legal practitioner or government legal officer.

- (7) A court to which an application is made under subsection (2) may, if it considers that the justice of the case requires that it do so and having regard to the restrictions mentioned in section 202D(6), make an order varying the restrictions to which the restricted licence is subject under section 202D or this section.
- (8) If the chief executive is given—
  - (a) a copy of an order made under this section (a ***variation order***) certified to be a true copy by a relevant clerk of the court that made the order; and
  - (b) the restricted licence to which the variation order relates and, if the holder of the restricted licence has a marine licence indicator, the holder's marine licence indicator;the licensing entity who dealt with the previous application for the restricted licence under section 202G must vary the restrictions to which the restricted licence is subject so the restrictions accord with those imposed by the court by the variation order.
- (9) Until the licensing entity mentioned in subsection (8) varies the restrictions to which the restricted licence is subject, those restrictions continue to apply to the restricted licence despite any variation order.



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## **Division 4                      Removal of disqualification**

### **202L    Application for removal of disqualification under div 2**

- (1) This section applies if a person was disqualified by an order under section 202A(2) from holding or obtaining a licence absolutely or for a period of more than 2 years, whether or not at the time of the order the person held a licence.
- (2) The person may, at any time after the expiration of 2 years from the start of the disqualification period, apply for the disqualification to be removed.
- (3) The application must be made to—
  - (a) if the disqualification was ordered by the Supreme Court—the Supreme Court; or
  - (b) if the disqualification was ordered by the District Court—the District Court; or
  - (c) if the disqualification was not ordered by the Supreme or District Court—
    - (i) if the person lives in Queensland—the Magistrates Court exercising jurisdiction at the place where the person lives; or
    - (ii) if the person lives outside Queensland—the Magistrates Court, Central division of the Brisbane Magistrates Courts District.
- (4) At least 28 days before the date of the hearing of the application, the applicant must give written notice about the application, including the time and place at which the application is to be heard, to the chief executive in a way prescribed under a regulation.
- (5) The chief executive is entitled to appear and be heard and to give and produce evidence at the hearing of the application, including for or against the grant of the application.
- (6) Also, the chief executive is entitled to be represented at the hearing.

[s 202M]

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*Note for subsection (6)—*

The chief executive may be represented by an Australian legal practitioner or government legal officer.

## **202M Court hearing an application**

- (1) This section applies to a hearing by the Supreme Court, the District Court or a Magistrates Court of an application under section 202L(2) for the removal of a disqualified person's disqualification.
- (2) As it considers appropriate, the court may—
  - (a) by order, remove the disqualification on and from a date stated in the order; or
  - (b) refuse the application.
- (3) For subsection (2), the court must have regard to the following—
  - (a) the character of the disqualified person;
  - (b) the disqualified person's conduct after the order under section 202A(2) was made;
  - (c) the nature of the offence for which the disqualified person was convicted by the disqualifying court;
  - (d) other circumstances relating to the disqualification or application.
- (4) If the application is refused, a further application under section 202L(2) must not be considered if made within 1 year after the date of the refusal.
- (5) If an order for the removal of a disqualification is made under subsection (2)(a), the court may order the applicant to pay all or part of the costs of the application.
- (6) A relevant clerk of the court that deals with the application must give the chief executive information about the outcome of the application.

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## Part 15A Protection for whistleblowers

### 202N Definitions for pt 15A

In this part—

*disclosing person* see section 202P(1).

*official* means—

- (a) the chief executive; or
- (b) the general manager; or
- (c) a harbour master; or
- (d) a shipping inspector.

*reprisal* see section 202R(3).

### 202O Application of pt 15A

- (1) This part applies to a person other than a person who makes a disclosure as a public officer under the *Public Interest Disclosure Act 2010*.
- (2) If a disclosure is made under the *Public Interest Disclosure Act 2010*, this part does not limit the application of that Act and that Act does limit the application of this part.

### 202P General limitation

- (1) A person (the *disclosing person*) is not civilly or criminally liable for disclosing information to an official about a person's conduct, whether committed before or after the commencement of this section, that the disclosing person honestly believes, on reasonable grounds, contravenes this Act.
- (2) Without limiting subsection (1)—
  - (a) in a proceeding for defamation, the disclosing person has a defence of absolute privilege for publishing the disclosed information; and

[s 202Q]

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- (b) if the disclosing person would otherwise be required to maintain confidentiality about the disclosed information under an Act, agreement, oath, rule of law or practice, the disclosing person does not—
  - (i) contravene the Act, oath, rule of law or practice by making the disclosure; or
  - (ii) breach the agreement by making the disclosure.
- (3) In this section—

*agreement* includes a contract or deed.

### **202Q Liability for conduct unaffected**

- (1) The liability of the disclosing person for his or her own conduct is not affected only because the disclosing person discloses the conduct to an official.
- (2) However, a court may have regard to the disclosure if the disclosing person is prosecuted for an offence involving the conduct and either of the following applies—
  - (a) the disclosing person is the master of a ship and his or her conduct was in compliance with an express instruction of the owner of the ship or someone authorised by the owner to give the instruction;
  - (b) the disclosing person is another member of a ship's crew and his or her conduct was in compliance with an express instruction of the master of the ship or someone authorised by the master to give the instruction.
- (3) Subsection (2) does not limit the *Penalties and Sentences Act 1992*.

### **202R Reprisal and grounds for reprisal**

- (1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody has made, or may make, a disclosure as mentioned in section 202P(1).

- (2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- (3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- (4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- (5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

### **202S Damages entitlement or other remedy for reprisal**

- (1) A reprisal is a tort and a person who takes a reprisal is liable in damages to anyone who suffers detriment as a result.
- (2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.
- (3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.
- (4) This section does not limit any other remedy that may be available at law to the person against whom the reprisal is taken.

### **202T False or misleading statements**

A person must not, for section 202P(1), state anything to an official that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

### **202U False or misleading documents**

- (1) A person must not, for section 202P(1), give an official a document containing information the person knows is false or

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misleading in a material particular.

Maximum penalty—200 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) informs the official, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

## **Part 16**                      **Review of and appeals against particular decisions**

### **203**    **Definitions for pt 16**

In this part—

*delegate*, of the chief executive or general manager, means a person who makes a decision as the delegate of the chief executive or general manager.

*original decision* means a decision made under this Act by the chief executive, the general manager, a delegate of the chief executive or general manager, a harbour master or a shipping inspector, other than a reviewed decision.

*reviewed decision* means the chief executive's or general manager's decision made, or taken to have been made, on a review under section 203B.

### **203A**    **Main purposes of pt 16**

The main purposes of this part are to provide for—

- (a) reviews of particular decisions made under this Act, whether the decisions are made by the chief executive, the general manager, a delegate of the chief executive or

general manager, a harbour master or a shipping inspector; and

- (b) the application of the *Transport Planning and Coordination Act 1994*, part 5, divisions 2 and 3; and
- (c) appeals from decisions under section 202A, including, for example, decisions disqualifying persons from holding or obtaining licences.

### **203B Internal review of decisions**

- (1) A person whose interests are affected by an original decision may ask the following to review it—
  - (a) if the original decision was made by the chief executive or a delegate of the chief executive—the chief executive;
  - (b) if the original decision was made by a shipping inspector who is an employee of the Gold Coast Waterways Authority—the Gold Coast Waterways Authority;
  - (c) otherwise—the general manager.
- (2) The *Transport Planning and Coordination Act 1994*, part 5, division 2—
  - (a) applies to the review; and
  - (b) provides—
    - (i) for the procedure for applying for the review and the way it is to be carried out; and
    - (ii) that the person may apply to QCAT to have the original decision stayed.
- (3) For applying the *Transport Planning and Coordination Act 1994*, part 5, division 2 to a person other than the chief executive, a reference to the chief executive in that division, including, for example, sections 33 and 34 of that Act, is taken to be a reference to—

[s 203C]

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- (a) if the original decision was made by the general manager or a delegate of the general manager—the general manager; or
- (b) if the original decision was made by a shipping inspector who is an employee of the Gold Coast Waterways Authority—the Gold Coast Waterways Authority.

### **203C External review of decisions**

- (1) If a reviewed decision is not the decision sought by the applicant for the review, the chief executive must give the applicant a QCAT information notice for the reviewed decision.
- (2) The applicant may apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision.

*Note—*

The QCAT Act, section 22(3) provides that QCAT may stay the operation of the reviewed decision, either on application by a person or on its own initiative.

- (3) In this section—

*chief executive* means—

- (a) if the reviewed decision is made by the general manager—the general manager; or
- (b) if the reviewed decision is made by the Gold Coast Waterways Authority—the Gold Coast Waterways Authority.

### **203D Decisions that can not be appealed against etc.**

The following decisions can not be appealed against or be the subject of a review—

- (a) a decision of the Governor in Council;
- (b) a decision of the Minister about a board of inquiry;



- (c) a decision of the chief executive or general manager about a standard.

## **204 Appeals in relation to disqualification under s 202A**

- (1) This section applies to a person who, because of a conviction for an offence mentioned in section 202A(1), is disqualified from holding or obtaining a licence by an order under section 202A.
- (2) The disqualified person may appeal against the order in the same way the person may appeal against the conviction.
- (3) The court deciding the appeal may, having regard to the circumstances of the case and as it considers appropriate—
  - (a) by order, remove the disqualification on and from a date stated in the order; or
  - (b) dismiss the appeal.
- (4) A relevant clerk of the court deciding the appeal must give information about the outcome of the appeal to the chief executive.
- (5) If the disqualified person starts an appeal against the conviction, the disqualification is suspended pending the decision on the appeal.
- (6) However, subject to any decision of a court on the appeal, the part of the period of disqualification that had not expired when the suspension began to operate takes effect from the date of decision of the appeal.

## **Part 17 Miscellaneous**

### **205 False or misleading documents**

- (1) A person must not—

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- (a) for the purposes of this Act, give to the chief executive, the general manager or an officer or employee of the department or of MSQ a document containing information the person knows is false or misleading in a material particular; or
- (b) state in a document that the person knows will, for the purposes of this Act, be given to the chief executive, the general manager or an officer or employee of the department or of MSQ by someone else (the *other person*), information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

- (2) For subsection (1)(b), it is immaterial whether the other person knows the information is false or misleading in a material particular.
- (3) Also, subsection (1)(b) does not limit the Criminal Code, section 7, 8 or 542, in its application to subsection (1)(a).
- (4) Subsection (1) does not apply to a person who, when giving the document or making the statement—
  - (a) informs the chief executive, general manager, officer or employee, to the best of the person's ability, how it is false or misleading; and
  - (b) gives the correct information to the chief executive, general manager, officer or employee if the person has, or can reasonably obtain, the correct information.
- (5) This section does not apply to a document given under section 202U to an official within the meaning of section 202N.

### **205A Inquiries about person's suitability to conduct examinations or conduct training programs**

- (1) The chief executive or the general manager may make inquiries about a person to help in deciding whether—
  - (a) the person is a suitable person for approval, or to continue to be approved, to—

- (i) conduct examinations for issuing licences; or
  - (ii) conduct training programs in the operation of ships; or
- (b) a corporation or unincorporated body for which the person is a nominee is a suitable person for approval, or to continue to be approved, to—
  - (i) conduct examinations for issuing licences; or
  - (ii) conduct training programs in the operation of ships; or
- (c) a corporation of which the person is an executive officer is a suitable person for approval, or to continue to be approved, to—
  - (i) conduct examinations for issuing licences; or
  - (ii) conduct training programs in the operation of ships.
- (1A) Without limiting subsection (1), the chief executive or the general manager may ask the commissioner of the police service for a written report about a person's criminal history.
- (1B) For subsection (1A), the chief executive's or general manager's request may include the following information—
  - (a) the person's name and any other name the chief executive or general manager believes the person may use or may have used;
  - (b) the person's gender and date and place of birth;
  - (c) details of the person's driver licence under the *Transport Operations (Road Use Management) Act 1995*;
  - (d) details of the application for approval or approval of—
    - (i) the person; or
    - (ii) the corporation or unincorporated body for which the person is a nominee; or
    - (iii) the corporation of which the person is an executive officer.

[s 205AA]

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- (2) The commissioner of the police service must give a written report about a person's criminal history—
  - (a) to the chief executive if the chief executive asked the commissioner for the person's criminal history; or
  - (b) to the general manager if the general manager asked the commissioner for the person's criminal history.
- (3) Subsection (2) applies to the criminal history in the commissioner's possession or to which the commissioner has access.

### **205AA Notice of change in police information about a person**

- (1) This section applies if—
  - (a) the commissioner of the police service reasonably suspects that a person is the holder, or is a nominee or an executive officer of an entity that is the holder, of an approval—
    - (i) to conduct examinations for issuing licences; or
    - (ii) to conduct training programs in the operation of ships; and
  - (b) the person's criminal history changes.
- (2) The commissioner may notify the chief executive or the general manager that the person's criminal history has changed.
- (3) The commissioner's notice to the chief executive or general manager must state the following—
  - (a) the person's name and any other name the commissioner believes the person may use or may have used;
  - (b) the person's gender and date and place of birth;
  - (c) whether the change is—
    - (i) a charge made against the person for an offence; or
    - (ii) a conviction of the person;
  - (d) details of the charge or conviction.

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**205AB Chief executive or general manager may enter into arrangement about giving and receiving information with commissioner of the police service**

- (1) This section applies only to the extent another provision of this Act allows the chief executive or general manager to give information to the commissioner of the police service or the commissioner to give information to the chief executive or the general manager.
- (2) The chief executive and the commissioner, or the general manager and the commissioner, may enter into a written arrangement by which the information is given or received.
- (3) Without limiting subsection (2), the arrangement may provide for the electronic transfer of information, including on a daily basis.
- (4) However, if information is to be electronically transferred and, under this Act, there is a limitation on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.

**205AC Confidentiality**

- (1) A person must not disclose, record or use information that the person gained—
  - (a) through involvement in the administration of this Act; or
  - (b) because of an opportunity provided by the involvement.Maximum penalty—200 penalty units.
- (2) However, a person may disclose, record or use the information—
  - (a) in the discharge of a function under this Act; or
  - (b) if it is authorised—
    - (i) under another Act or a regulation; or
    - (ii) by the person to whom the information relates; or
  - (c) in a proceeding before a court or tribunal in which the information is relevant.

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(3) In this section—

*disclose* information means—

- (a) intentionally or recklessly disclose the information; or
- (b) allow access to the information.

*information* includes a digital photo and digitised signature.

### **205B Electronic search to verify person is holder of licence**

- (1) A person may, on payment of the fee prescribed under a regulation, electronically search information held by the department about licences to verify that a person is the holder of a licence under this Act.
- (2) However, the person may search information only—
  - (a) to verify the person's own licence; or
  - (b) with the consent of the person to whom the search relates.

### **206 Signals of distress**

- (1) A person must not—
  - (a) use or display a prescribed signal of distress other than under a regulation; or
  - (b) cause or permit someone else to use or display a prescribed signal of distress other than under a regulation.

Maximum penalty—200 penalty units.

- (2) If—
  - (a) a person has, under a regulation, used or displayed a prescribed signal of distress or caused or permitted someone else to use or display the prescribed signal; and
  - (b) any prescribed circumstances arise when the prescribed signal must be revoked;

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the person must immediately use all ways of communicating at the person's disposal to revoke the prescribed signal.

Maximum penalty—200 penalty units.

- (3) However, if the contravention of subsection (1) or (2) by a person causes the death of, or grievous bodily harm to, someone else, the person commits an indictable offence and is liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.
- (4) If a person is convicted of an offence against this section, the court may order the person to pay to the State or another person an amount that represents reasonable compensation for loss or expense suffered, work undertaken and risk incurred because of the person's act or omission.

## **206A General manager's power to fix speed limits for ships**

- (1) The general manager may fix speed limits for ships, other than speed limits for ships for Gold Coast waters, by gazette notice.
- (2) The gazette notice is not subordinate legislation.
- (3) A person must not operate a ship at a speed of more than a speed limit fixed under this section.

Maximum penalty—200 penalty units.

- (4) The general manager may erect or mark, at a place in waters for which a speed limit is fixed under subsection (1) or adjacent to the waters, a sign (a *speed sign*) stating the speed limit for the waters.
- (5) A speed sign may be an official traffic sign except that the speed indicated by the number on the sign is the speed in knots.
- (6) This section does not prevent a regulation making provision about speed limits.
- (7) If there is an inconsistency between a regulation and a gazette notice, the regulation prevails to the extent of the inconsistency.

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- (8) It is declared that a gazette notice under this section is taken never to have been subordinate legislation.
- (9) The general manager must publish on MSQ's website information about all of the speed limits for ships, other than speed limits for ships for Gold Coast waters, including speed limits for ships fixed by the general manager and by regulation.

### **206AA Gold Coast Waterways Authority's power to fix speed limits for ships**

- (1) The Gold Coast Waterways Authority may, for Gold Coast waters, fix speed limits for ships by gazette notice.
- (2) The gazette notice is not subordinate legislation.
- (3) A person must not operate a ship at a speed of more than a speed limit fixed under this section.  
Maximum penalty—200 penalty units.
- (4) The Gold Coast Waterways Authority may erect or mark, at a place in waters for which a speed limit is fixed under subsection (1) or adjacent to the waters, a sign (a *speed sign*) stating the speed limit for the waters.
- (5) A speed sign may be an official traffic sign except that the speed indicated by the number on the sign is the speed in knots.
- (6) This section does not prevent a regulation making provision about speed limits.
- (7) If there is an inconsistency between a regulation and a gazette notice, the regulation prevails to the extent of the inconsistency.
- (8) The Gold Coast Waterways Authority must publish on the authority's website information about all of the speed limits for ships for Gold Coast waters, including speed limits fixed by the authority and by regulation.



## **206B Approval of forms**

The chief executive may approve forms for use under this Act.

# **Part 18 Regulations**

## **207 Regulation-making power**

The Governor in Council may make regulations under this Act.

## **208 Marine safety regulations—generally**

- (1) The Governor in Council may make regulations about marine safety and issues affecting marine safety.

*Example—*

the establishment, registration and control of buoy moorings

- (2) Without limiting subsection (1), a regulation may be made about the design, building, surveying, maintenance, equipment, crewing, and stability of ships and handling the ship's cargo (including livestock).
- (3) A regulation may—
  - (a) specify the objectives to be achieved and maintained under the regulation; and
  - (b) specify indicators, parameters, factors or criteria to be used in measuring or deciding any quality or condition of the matter dealt with in the regulation; and
  - (c) establish a program by which the specified objectives are to be achieved and maintained; and
  - (d) provide for a program performance assessment procedure (including performance indicators).

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## **209 Regulations about fees and charges**

- (1) A regulation may be made about the fees and charges payable under this Act.
- (2) A charge may be a tax.

## **210 Penalties under regulations to be limited**

The maximum penalty that may be prescribed by a regulation for an offence against a regulation is 200 penalty units.

## **211 Regulation may give effect to treaties, conventions or international agreements or documents**

- (1) A regulation may give effect (with or without changes and whether in whole or part) to a treaty, convention or international agreement or document about ships.

*Examples—*

- 1 the Prevention of Collisions Convention (within the meaning of the Commonwealth Navigation Act, part IV)
  - 2 the Safety Convention (also within the meaning of the Commonwealth Navigation Act, part IV)
  - 3 resolutions, codes, recommendations and other documents issued by the International Maritime Organisation
- (2) A person must not contravene a regulation made under subsection (1) that is declared to be a regulation to which this subsection applies, unless the person has a reasonable excuse.

Maximum penalty—500 penalty units or imprisonment for 1 year.

## **212 Regulations may give effect to agreements or documents about ships approved by Australian entity**

A regulation may give effect (with or without changes and whether in whole or part) to an agreement or document about ships approved by an Australian entity whose functions include matters relating to marine safety.

*Example—*

Uniform Shipping Laws Code adopted by the Australian Transport Council

*Editor's note—*

The Australian Transport Council comprises Commonwealth, State, Territory and New Zealand Ministers responsible for transport, roads, and marine and ports issues.

## **213 Regulations about dangerous substances**

- (1) A regulation may make provision about goods mentioned in the International Maritime Dangerous Goods Code issued by the International Maritime Organisation, including, for example—
  - (a) the marking and carriage of the goods; and
  - (b) the loading of goods onto, or discharge of goods from, a ship in a pilotage area.
- (2) The regulation may also make provision for the powers of harbour masters for the ships.
- (3) A person must not contravene a regulation made under subsection (1) that is declared to be a regulation to which this subsection applies, unless the person has a reasonable excuse.  
Maximum penalty for subsection (3)—500 penalty units.
- (4) A regulation about a dangerous substance that is an explosive within the meaning of the *Explosives Act 1999* is complementary to that Act.

## **214 Regulations about signals of distress**

A regulation may make provision about—

- (a) the signals to be used as prescribed signals of distress; and
- (b) the circumstances when a prescribed signal of distress may be used; and

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- (c) the circumstances when a prescribed signal of distress must be revoked.

## **215 Pilotage fees, conservancy dues and related matters**

- (1) A regulation may provide for the following—
  - (a) establishing fees on a user pays basis—
    - (i) for pilotage services in pilotage areas and compulsory pilotage areas; and
    - (ii) for other services for other matters incidental or related to pilotage services, including, for example, establishing other fees for delay or cancellation of pilotage services;
  - (b) establishing conservancy dues in relation to ships;
  - (c) procedures for the payment of pilotage fees, other fees and conservancy dues;
  - (d) procedures for recovering pilotage fees, other fees or conservancy dues payable under this Act.
- (2) Without limiting the *Statutory Instruments Act 1992*, sections 24 or 25, for establishing a pilotage fee, other fee or conservancy due under subsection (1), a regulation may establish the pilotage fee, other fee or conservancy due by reference to a ship's length.
- (3) A conservancy due may be a tax.
- (4) In this section—

***other fee*** means a fee for other services for other matters incidental or related to pilotage services, established under a regulation as mentioned in subsection (1)(a)(ii).

***pilotage fee*** means a fee for pilotage services, established under a regulation as mentioned in subsection (1)(a)(i).

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**216 Detention of ships for unpaid fees etc.**

- (1) A regulation may make provision for the detention of a ship because—
  - (a) pilotage fees, conservancy dues or other fees, charges or amounts payable for the ship have not been paid; or
  - (b) a penalty payable by the owner or master of the ship has not been paid.
- (2) The regulation must provide for fair procedures for the detention of a ship, including, for example, the giving of notice to the owner or master of the ship about the detention.
- (3) The notice about the detention must be signed by—
  - (a) if the ship is in a port—the general manager; or
  - (b) if the ship is in a pilotage area—the general manager or a harbour master.
- (4) The notice must also contain information about—
  - (a) the reasons for the detention; and
  - (b) the way the owner or master of the ship can give security for the payment of the amounts payable to the State in relation to the ship; and
  - (c) the way the detention can be appealed against; and
  - (d) other relevant matters.
- (5) A person must not cause a ship to leave the port or pilotage area where it has been detained unless—
  - (a) the general manager or a harbour master has released the ship from detention; or
  - (b) a harbour master has directed the ship to depart the pilotage area because of safety considerations; or
  - (c) a court has ordered that the ship may leave the port or pilotage area.

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Maximum penalty—the number of penalty units (rounded upwards to the next number if necessary) obtained by using the following formula—

$$\frac{\text{amount owing} \times 3}{\text{the value of 1 penalty unit}}$$

- (6) The owner of a ship is liable for the costs, under a regulation, of detaining the ship.
- (7) In this section—
- amount owing*, for a ship detained under this section, means the total of—
- (a) the amount owing to the State for which the ship has been detained (including any interest payable on the amount); and
  - (b) costs payable for the detention of the ship.

## **217 Regulations about aquatic events and activities**

- (1) A regulation may make provision in relation to any of the following events or activities—
- (a) a race, or speed trial, for any type of ship;
  - (b) a water skiing competition or display;
  - (c) any other type of display on water, including, for example, a fireworks display;
  - (d) a swimming race or other organised activity on water, including, for example, the swimming leg of a triathlon or an attempt to establish a long distance swimming record;
  - (e) an event involving people on the water in or on a thing as part of a carnival, competition, fun race or other activity;
  - (f) another event or activity that takes place wholly or partly on or in water, including, for example, white water rafting, parasailing, canoeing and kayaking.

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- (2) If a regulation requires a person (an *applicant*) to obtain the consent of a stated person under the regulation before holding an event or activity mentioned in subsection (1), neither the State or the stated person—
    - (a) is responsible for supervising the holding of the event or activity; or
    - (b) is liable in relation to the holding or conduct of the event or activity.
  - (3) Subsection (2) does not prevent the State being held liable in relation to the grant of the consent to the applicant to hold the event or activity by a person whose consent was required under a regulation.

## 218 Other matters for regulations

- (1) A regulation may make provision about—
  - (a) speed limits for ships and the use of devices to measure the speed of ships; and
  - (b) the removal of obstructions to navigation outside pilotage areas; and
  - (c) the security required by the State for the removal of obstructions to navigation (whether in or outside of a pilotage area); and
  - (d) if a harbour master or someone else removes an obstruction to navigation—selling or disposing of the thing that caused the obstruction and, if relevant, dealing with the proceeds of the sale; and
  - (e) where buoy moorings may be established, approvals for establishing buoy moorings at locations and other matters relating to identifying and using buoy moorings.
- (2) Also, a regulation may make provision about the operation and activities of ships not otherwise provided for under sections 208 to 217.

*Examples for subsection (2)—*

- provision about amenity

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- provision about zones and controlling the operation of ships in the zones
- (3) If under a regulation, whether made before or after the commencement of this subsection, the general manager, the Gold Coast Waterways Authority or the chief executive approved the establishment of a buoy mooring or where a buoy mooring may be established, the general manager, the Gold Coast Waterways Authority, the chief executive and the State are not, and never have been, responsible—
- (a) for approving the structural integrity of the buoy mooring; or
  - (b) for other matters in relation to the buoy mooring's establishment or maintenance.
- (4) The general manager, the Gold Coast Waterways Authority, the chief executive and the State are not, and never have been, liable in relation to a buoy mooring's establishment or maintenance other than in relation to the approval of the location of the buoy mooring.
- (5) However if a court decided a matter before the commencement of this subsection, and the decision included a finding that the general manager, the Gold Coast Waterways Authority, the chief executive or the State was liable in relation to an approval in relation to a buoy mooring, the decision is not affected by subsections (3) and (4).

## **219 General manager's power to fix other matters by gazette notice**

Without limiting the *Statutory Instruments Act 1992*, section 26, a regulation may authorise the general manager to provide, by gazette notice, for an aspect of a matter prescribed in the regulation.

*Examples of aspects of matters—*

- changing times prescribed in a regulation for reporting matters relevant to ships with dangerous cargo or for matters about notice requirements for amending or cancelling pilotage



- defining areas of Queensland waters as category areas for buoy moorings
- stating waters where the presence of anchored ships involves danger to aircraft or other ships or the anchoring, berthing, mooring or operating of a ship, or type of ship, endangers marine safety

## Part 19 Transitional provisions

### Division 1 Provisions for Act No. 14 of 1994

#### 220 References to former Act etc.

A reference in an Act or document—

- (a) to the former Act or the *Marine Safety Act 1994* is a reference to this Act; and
- (b) to the former board, a member of the former board, the secretary to the former board or the portmaster is a reference to the chief executive; and
- (c) to a vessel (within the meaning of the former Act) is a reference to a ship (within the meaning of this Act).

### Division 2 Provisions for Maritime Safety Queensland Act 2002

#### 225 Definitions for div 2

In this division—

***commencement*** means the commencement of this division.

***former function of the chief executive*** means a function that, immediately before the commencement, was a function of the chief executive but that on the commencement became a function of the general manager.

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## **226 Transition of chief executive's functions to general manager**

- (1) If—
- (a) a process relating to a former function of the chief executive was started before the commencement; and
  - (b) the process was not completed before the commencement;
- the chief executive must complete the process.

*Example of a process—*

the process of suspending or cancelling an approval

- (2) However, subsection (1) does not limit the chief executive's power to delegate a function under the *Transport Planning and Coordination Act 1994*.

## **227 Exemptions**

- (1) This section applies to an exemption given by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.
- (2) The exemption continues to have effect after the commencement as if it had been given by the general manager.

## **228 Standards**

- (1) This section applies to a standard given by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.
- (2) The standard continues to have effect after the commencement as if it had been given by the general manager.

## **229 Approvals**

- (1) This section applies to an approval given by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.
- (2) The approval continues to have effect after the commencement as if it had been given by the general manager.

## **230 Appointments**

- (1) This section applies to an appointment made by the chief executive when performing a former function of the chief executive that is current immediately before the commencement.
- (2) The appointment continues to have effect after the commencement as if it had been made by the general manager.

## **231 Agreements**

- (1) This section applies to an agreement made by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.
- (2) The agreement continues to have effect after the commencement as if it had been made by the general manager.

## **232 Fixing of speed limits for ships**

- (1) This section applies to a speed limit fixed for a ship by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.
- (2) The speed limit continues to have effect after the commencement as if it had been fixed by the general manager.

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### **233 Notices**

- (1) This section applies to a notice made, given or signed by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.
- (2) The notice continues to have effect after the commencement as if it had been made, given or signed by the general manager.

### **234 Other things done by chief executive**

- (1) This section applies to anything done, made, given or signed by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement and is not otherwise provided for under this part.
- (2) The thing continues to have effect after the commencement as if it had been done, made, given or signed by the general manager.

### **235 Particular references to chief executive**

A reference in an Act or document to the chief executive may, if the context permits, be taken to be a reference to the general manager.

## **Division 3 Provisions for Maritime and Other Legislation Amendment Act 2006**

### **236 References in other legislation to words defined in s 4**

- (1) This section applies to a reference in another Act or statutory instrument, that is in force at the commencement of this section, to a word or expression as defined in this Act (however the reference is worded) that includes a reference to section 4.

*Example—*

The *Transport Infrastructure (Public Marine Facilities) Regulation 2000*, schedule 4 includes a definition of ship as follows—

*ship* see *Transport Operations (Marine Safety) Act 1994*, section 4.

- (2) If the context permits, the reference is taken to be a reference to that word or expression as defined in the schedule.
- (3) In this section—  
*section 4* means section 4 of this Act as the section was in force immediately before the commencement of this section.

### **237 Provisions relating to the power of harbour masters before the commencement to give directions**

- (1) If a direction was given under part 7, division 2 before the commencement of this section and continued to have effect immediately before the commencement—
  - (a) the direction continues to have effect; and
  - (b) this Act, as in force immediately before the commencement, continues to apply to the direction and the obligations of any person arising out of the direction.

*Examples for paragraph (b)—*

- 1 If, before the commencement of this section, the master of a ship is taken to have been given a direction that, under section 86(3), was given to a crew member, after the commencement the master continues to have an obligation to comply with the direction.
  - 2 If, before the commencement of this section, a person is given a direction under section 89, after the commencement the person continues to have an obligation to comply with the direction even though it was not in writing.
- (2) If a harbour master had started to carry out a direction or proposed direction as mentioned in section 93 as in force immediately before the commencement, the harbour master may continue to carry out the direction or proposed direction.
  - (3) Section 94, as in force immediately before the commencement, continues to apply to an expense incurred

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before the commencement and also applies to an expense incurred by a harbour master who, under subsection (2), continues to carry out a direction or proposed direction.

- (4) Subsections (2) and (3) do not limit subsection (1).

### **238 Reasonable excuse for not reporting marine incident**

Section 125(4) and (5) apply in relation to a marine incident even if it happened before the commencement of this section.

### **239 Direction or notice given by shipping inspector before the commencement**

- (1) This section applies to any of the following given by a shipping inspector before the commencement of this section that continues to have effect immediately before the commencement—
- (a) a direction under section 171 or 172, as in force before the commencement;
  - (b) a notice under section 172A, as in force before the commencement.
- (2) This Act, as in force immediately before the commencement, continues to apply to—
- (a) the direction or notice; and
  - (b) the obligations of any person arising out of the direction or notice.

### **240 Property seized under s 175A before the commencement**

If property is seized by a shipping inspector under section 175A before the commencement of this section, that section as in force immediately before the commencement continues to apply in relation to the property and its seizure.

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**241 Enforcement order or interim enforcement order only if offence committed after the commencement**

An enforcement order or interim enforcement order may not be made under part 13A, division 2 in relation to an offence committed entirely before the commencement of this section.

**242 Disqualification under s 202A only if offence committed after the commencement**

Section 202A does not apply to a person if the person committed an offence mentioned in section 202A(1)(a) before the commencement of this section.

**243 Decisions made before the commencement**

- (1) If a person whose interests were affected by a pre-commencement decision started an appeal under previous part 16 against the decision—
  - (a) previous part 16 continues to apply to the appeal; and
  - (b) previous part 16 applies in relation to any decision made on appeal about the pre-commencement decision.
- (2) If a person whose interests were affected by a pre-commencement decision had not started an appeal under previous part 16 against the decision before the commencement of this section, the person may not start an appeal under previous part 16 but may take action in relation to the pre-commencement decision under new part 16.
- (3) In this section—

*new part 16* means part 16 as in force immediately after the commencement of this section.

*pre-commencement decision* means a decision made under this Act before the commencement of this section that may be appealed under previous part 16.

*previous part 16* means part 16 as in force immediately before the commencement of this section.

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## **244 Existing licences to drive speedboats and other recreational ship master's licences**

- (1) This section applies to a person—
  - (a) who, immediately before the commencement of this section, was taken to be the holder of a licence under this Act that was a licence to drive a speedboat; or  
*Editor's note—*  
Repealed section 224 previously dealt with this issue.
  - (b) who, on or after 3 June 1994, became the holder of a recreational ship master's licence.
- (2) If, before the commencement, a licence mentioned in subsection (1) had not been cancelled or surrendered under this Act, the person who holds the licence is taken to be the holder of a licence under this Act to operate a recreational ship as its master as if the licence were granted under this Act.
- (3) If, before the commencement, a licence mentioned in subsection (1) had been suspended under this Act for a period, the person who holds the licence is taken to be the holder of a licence under this Act to operate a recreational ship as its master as if the licence were granted under this Act but suspended until the period expires.
- (4) To remove any doubt, it is declared that a recreational ship master's licence granted on or after 3 June 1994 and before the commencement, has not expired even if the licence included an expiry date on the licence.

## **Division 4 Provision for Transport Legislation Amendment Act 2008, part 6**

### **245 Making orders under s 199B**

An order may not be made under section 199B in relation to an offence committed entirely before the commencement of that section.



**Division 5**                      **Provision for Gold Coast Waterways  
Authority Act 2012**

**246**    **Fixing of speed limits for ships for Gold Coast waters**

- (1) This section applies if, immediately before the commencement of the *Gold Coast Waterways Authority Act 2012*, section 129, a speed limit was fixed under section 206A for ships for Gold Coast waters.
- (2) The speed limit is taken to have been fixed by the Gold Coast Waterways Authority under section 206AA.

## Schedule Dictionary

### section 4

**accredited**, in relation to a ship designer, ship builder or marine surveyor, means a ship designer, ship builder or marine surveyor accredited under a regulation.

**aid to navigation** see section 104.

**approval** means any of the following—

- (a) registration of a ship;
- (b) licensing of a person as a master, crew member or pilot;
- (c) accreditation of an entity to license a person as a master, crew member or pilot;
- (d) approval of an entity to conduct training programs relating to the operation of ships;
- (e) permission for a person to operate a ship as its master or pilot;
- (f) accreditation of a ship designer, ship builder or marine surveyor.

**approved form** see section 206B.

**Australian legal practitioner** see the *Legal Profession Act 2007*, schedule 2.

**authorised action**, for part 13A, for a prescribed applicant, means action the prescribed applicant is authorised to take by a District Court order made under section 183GA(1).

**building**, in relation to a ship, includes altering the ship, or replacing a part of the ship, if the alteration or replacement is declared, under a regulation, to be an alteration or replacement that may affect marine safety.

**buoy mooring** means something, other than the ship's own equipment, used, or intended to be used, for mooring a ship, that consists of each of the following—

- 
- (a) a device attached to or sitting on the seabed or the bed of other Queensland waters;
  - (b) a system involving cables, chains or ropes that is attached to the device mentioned in paragraph (a);
  - (c) a buoy or other float on the surface of the water, that is attached to the system mentioned in paragraph (b) and marks the location of the device and system.

**causes** includes—

- (a) for a marine incident—substantially contributing to the marine incident; and
- (b) for the death of, or grievous bodily harm to, a person—substantially contributing to the death of, or grievous bodily harm to, the person.

**certificate of compliance** see section 5.

**certificate of survey**, for a ship, means a certificate of survey issued for the ship under a regulation.

**commercial ship** see section 10A(1).

**Commonwealth Navigation Act** means the *Navigation Act 1912* (Cwlth).

**compulsory pilotage area** means a pilotage area, or part of a pilotage area, declared under a regulation to be a compulsory pilotage area.

**connected with Queensland**, for a ship, see section 6.

**convicted**, of an offence, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

**criminal history**, of a person—

- (a) means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and
- (b) despite that Act, includes a charge or pending charge made against the person for an offence, whether made in Queensland or elsewhere, other than a charge the

proceedings for which have ended without a conviction being recorded.

**delegate**, of the chief executive or general manager, for part 16, see section 203.

**digital photo** means a facial image encoded in a digital form.

**digitised signature** means a person's signature encoded in a digital form.

**disclosing person**, for part 15A, see section 202P(1).

**disqualified person** means a person for whom there is an order of a court under section 202A(2) disqualifying the person from holding or obtaining a licence, either absolutely or for a period ordered by the court.

**disqualifying court** see section 202A(3).

**division 3 undertaking**, for part 13A, means an undertaking under part 13A, division 3.

**electronic communication** see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

**enforcement order** means an order of the District Court under part 13A, division 2—

- (a) to remedy or restrain the commission of a notice offence; or
- (b) to ensure compliance with a division 3 undertaking.

**fishing ship** see section 10A(2).

**general direction** see section 86A(2).

**general manager** means the general manager under the *Maritime Safety Queensland Act 2002*.

**Gold Coast waters** see the *Gold Coast Waterways Authority Act 2012*, section 7(1).

**Gold Coast Waterways Authority** means the Gold Coast Waterways Authority established under the *Gold Coast Waterways Authority Act 2012*.

**government legal officer** see the *Legal Profession Act 2007*, schedule 2.

***grievous bodily harm*** has the meaning given by the Criminal Code.

***harbour master*** means a person who is appointed under this Act as a harbour master.

***holder***, of a marine licence indicator, means the person to whom the marine licence indicator has been given under this Act.

***interim enforcement order*** means an order under section 183D.

***interstate voyage*** means an inter-State voyage as defined under the Commonwealth Navigation Act.

***licence*** means—

- (a) a licence provided for under section 60(1); or
- (b) a restricted licence.

***licensing entity*** see section 202G(2).

***lost***, in relation to a ship or part of a ship, includes sunk and wrecked.

***marine history***, of a person, means the history of the contraventions for which the person has been dealt with under this Act or the *Transport Operations (Marine Pollution) Act 1995*.

***marine incident*** see section 123.

***marine incident area***, for a provision in part 7, division 2 under which a harbour master is authorised to give a direction in relation to a marine incident area, means an area where the harbour master reasonably believes a marine incident has happened or is likely to happen.

***marine licence***, for part 5, divisions 3A and 3B, means a licence to operate a personal watercraft, or a recreational ship, as its master.

***marine licence indicator*** means a written notice of the granting of a licence to operate a personal watercraft, or a recreational ship, as its master given to the person to whom the licence has been granted.

**master** see section 7.

**most recent digital photo**, of a person, means the most recent digital photo of the person taken and kept by—

- (a) the chief executive or general manager under section 63A; or
- (b) any chief executive under a prescribed smartcard Act.

**most recent digitised signature**, of a person, means the most recent digitised signature of the person taken and kept by—

- (a) the chief executive under section 63A; or
- (b) any chief executive under a prescribed smartcard Act.

**MSQ** means Maritime Safety Queensland established under the *Maritime Safety Queensland Act 2002*.

**notice offence** means an offence against any of the following provisions involving a person contravening a direction or requirement under this Act—

- section 87B(3)
- section 88(2)
- section 89(2)
- section 90(3)
- section 91(3)
- section 92(4)
- section 171(3)
- section 172(4)
- section 172AA(3)
- section 172AA(6)
- section 172A(4)
- section 175(2)
- section 191A(8)
- section 191B(3).

**obstruct** includes hinder, resist and attempt to obstruct.

**official**, for part 15A, see section 202N.

**operates**, a ship, see section 8.

**original decision**, for part 16, see section 203.

**overseas voyage** means an overseas voyage as defined under the Commonwealth Navigation Act.

**owner**, of a ship, see section 9.

**particular direction** see section 86A(4).

**personal watercraft** means a powered ship that—

- (a) has a fully enclosed hull that does not take on water if capsized; and
- (b) is designed to be operated by a person standing, crouching or kneeling on it or sitting astride it.

**person in control** includes—

- (a) for a ship—the ship’s master or the person who appears to be the ship’s master; and
- (b) for a vehicle—the vehicle’s driver or the person who appears to be the vehicle’s driver.

**pilot** means a person licensed under a regulation as a pilot and who, when on board a ship, has the conduct of it even though the person does not belong to the ship.

**pilotage area** means an area of Queensland waters that is declared under this Act to be a pilotage area.

**place** includes land and premises, but does not include a ship or vehicle.

**port**, of a port authority, has the same meaning as in the *Transport Infrastructure Act 1994*.

**port authority** means a port authority under the *Transport Infrastructure Act 1994*.

**port operator** has the meaning given in the *Transport Infrastructure Act 1994*, section 267.

**premises** includes—

(a) a building or other structure or part of a building or other structure; and

(b) land where a building or other structure is situated.

**prescribed applicant**, for part 13A, means any of the following—

(a) the chief executive;

(b) the general manager;

(c) a harbour master.

**prescribed smartcard Act** means any of the following Acts—

(a) the *Adult Proof of Age Card Act 2008*;

(b) the *Tow Truck Act 1973*;

(c) the *Transport Operations (Passenger Transport) Act 1994*;

(d) the *Transport Operations (Road Use Management) Act 1995*.

**Queensland intrastate voyage** means a voyage beginning or ending in Queensland waters, other than an interstate voyage or overseas voyage.

**reasonably believes** means believes on grounds that are reasonable in all the circumstances.

**reasonably considers** means considers on grounds that are reasonable in all the circumstances.

**reasonably satisfied** means satisfied on grounds that are reasonable in all the circumstances.

**recreational ship** see section 10A(3).

**relevant clerk**, of a court, means—

(a) if the court is a Magistrates Court—the clerk of the court; or

(b) if the court is the District Court—a registrar, within the meaning of the *District Court of Queensland Act 1967*, of the court; or



- (c) if the court is the Supreme Court—a registrar of the court.

**reprisal**, for part 15A, see section 202R(3).

**restricted licence** means a licence under part 15, division 3.

**retention period**, for a digital photo and digitised signature, means the retention period worked out under section 63G.

**reviewed decision**, for part 16, see section 203.

**set up**, an aid to navigation, includes—

- (a) build, erect or place the aid; and
- (b) add to, alter or remove the aid; and
- (c) change its character or the way it exhibits its lights; and
- (d) maintain the aid.

**shelf life**, of a digital photo and digitised signature, means 10 years after the photo and signature are taken.

**ship** see section 10.

**shipping inspector** means a person who is appointed under this Act as a shipping inspector, and includes a harbour master.

**smartcard marine licence indicator** means a marine licence indicator in the form approved by the chief executive or general manager on which information may be stored electronically.

**source of interference** see section 92(1).

**standard** means a standard made under section 45 and includes an interim standard.

**take**, in relation to a digital photo or digitised signature, includes obtain.

**tender** means an auxiliary ship, other than a lifeboat, that—

- (a) is not longer than 6m; and
- (b) is employed to attend another ship; and

Schedule

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- (c) is smaller than the other ship; and
  - (d) is operated only in the proximity of the other ship.
- vehicle*** includes an aircraft but does not include a ship.

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## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 December 2012. Future amendments of the Transport Operations (Marine Safety) Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	3 June 1994	20 June 1994
2	1995 Act No. 9	5 April 1995	26 April 1995
3	1995 Act No. 58	28 November 1995	24 January 1996
3A	1996 Act No. 63	6 January 1997	2 May 1997
3B	1997 Act No. 66	12 December 1997	13 January 1998
4	1999 Act No. 15	11 June 1999	3 March 2000
4A	2000 Act No. 5	1 July 2000	7 July 2000
4B	2000 Act No. 46	25 October 2000	8 November 2000
4C	2001 Act No. 79	21 December 2001	21 December 2001
4D	2001 Act No. 79	1 January 2002	11 January 2002
4E	2002 Act No. 15	24 June 2002	24 June 2002

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Reprint No.	Amendments included	Effective	Notes
4F	2002 Act No. 29	1 October 2002	
4G	2004 Act No. 9	20 May 2004	
Reprint No.	Amendments included	Effective	Notes
4H	2004 Act No. 40	27 October 2004	
5	2005 Act No. 22	19 May 2005	
5A	2005 Act No. 49	2 November 2005	
5B	2006 Act No. 21	17 May 2006	
5C	2006 Act No. 21 (amd 2007 Act No. 6)	30 April 2007	
5D	2006 Act No. 21	4 May 2007	
5E	2007 Act No. 25	28 May 2007	
5F	2007 Act No. 6	1 June 2007	
5G	2007 Act No. 24	1 July 2007	R5G withdrawn, see R6
6	—	1 July 2007	
6A	2008 Act No. 31	21 May 2008	
6B	2008 Act No. 67	1 December 2008	
6C	2009 Act No. 25	2 November 2009	
6D	2009 Act No. 47	19 November 2009	
6E	2009 Act No. 24	1 December 2009	
6F	2009 Act No. 36	18 December 2009	
6G	2010 Act No. 13	1 April 2010	
6H	2010 Act No. 19	23 May 2010	
6I	2008 Act No. 71 (amd 2010 Act No. 13; 2010 Act No. 19)	24 July 2010	
6J	2010 Act No. 38	1 January 2011	R6J withdrawn, see R7
7	—	1 January 2011	
7A	2011 Act No. 12	14 April 2011	
7B	2011 Act No. 12	1 July 2011	
7C	2010 Act No. 44	30 January 2012	
7D	2012 Act No. 25	12 November 2012	
7E	2012 Act No. 38	1 December 2012	

## 5 List of legislation

### Transport Operations (Marine Safety) Act 1994 No. 14 (prev Marine Safety Act 1994)

date of assent 27 April 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 3 June 1994 (1994 SL No. 177)

Note—The changeover day is 31 December 1995 (see s 219).

amending legislation—

**Transport Infrastructure Amendment Act (No. 2) 1994 No. 49 s 6 sch 2**

date of assent 14 September 1994

commenced 18 November 1994 (1994 SL No. 399)

**Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 s 3 sch 1**

date of assent 1 December 1994

commenced on date of assent

**Transport Operations (Road Use Management) Act 1995 No. 9 s 92 sch 1 (this Act is amended, see amending legislation below)**

date of assent 5 April 1995

commenced on date of assent (see s 2(1))

amending legislation—

**Transport Infrastructure Amendment (Rail) Act 1995 No. 32 ss 1–2, 23 sch (amends 1995 No. 9 above)**

date of assent 14 June 1995

commenced on date of assent (see s 2(1))

**Statute Law (Minor Amendments) Act 1995 No. 50 ss 1, 3 sch**

date of assent 22 November 1995

commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Transport Operations (Marine Safety) Amendment Act 1996 No. 63**

date of assent 9 December 1996

ss 12–13 commenced 6 January 1997 (1996 SL No. 429)

ss 19–20 commenced 3 June 1994 (see s 2(2))

remaining provisions commenced on date of assent

**Transport Legislation Amendment Act 1997 No. 66 pts 1, 6**

date of assent 1 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 12 December 1997 (1997 SL No. 439)

**Explosives Act 1999 No. 15 ss 1–2, 137 sch 1**

date of assent 22 April 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 11 June 1999 (1999 SL No. 108)

**Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 373 sch 3**

date of assent 23 March 2000

ss 1–2, 373 commenced on date of assent (see s (2))  
remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000  
commenced on date of assent

**Transport Infrastructure and Another Act Amendment Act 2001 No. 36 pts 1, 3**

date of assent 7 June 2001  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2001 (2001 SL No. 92)

**Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1**

date of assent 8 November 2001  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 January 2002 (2001 SL No. 221)

**Transport Legislation Amendment Act 2001 No. 79 ss 1–2(3), pt 9**

date of assent 29 November 2001  
ss 1–2 commenced on date of assent  
remaining provisions commenced 21 December 2001 (2001 SL No. 279)

**Transport Legislation Amendment Act 2002 No. 15 ss 1, 2(2), pt 8**

date of assent 17 May 2002  
ss 1–2 commenced on date of assent  
remaining provisions commenced 24 June 2002 (2002 SL No. 140)

**Maritime Safety Queensland Act 2002 No. 29 ss 1–2, 16 sch 1**

date of assent 6 August 2002  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 October 2002 (2002 SL No. 249)

**Transport and Other Legislation Amendment Act 2004 No. 9 s 1, pt 3, s 8 sch**

date of assent 20 May 2004  
commenced on date of assent

**Transport and Other Legislation Amendment Act (No. 2) 2004 No. 40 pts 1, 2A**

date of assent 27 October 2004  
commenced on date of assent (see s 2)

**Transport Infrastructure and Other Legislation Amendment Act 2005 No. 22 s 1, pt 4**

date of assent 19 May 2005  
commenced on date of assent

**Transport Legislation Amendment Act 2005 No. 49 s 1, pt 4**

date of assent 2 November 2005  
commenced on date of assent

**Maritime and Other Legislation Amendment Act 2006 No. 21 pts 1, 4 (this Act is amended, see amending legislation below)**

date of assent 17 May 2006

Endnotes

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ss 91, 92 (to the extent it ins s 204), 105 (to the extent it ins s 242) commenced 30 April 2007 (2007 SL No. 69)

s 95 commenced 4 May 2007 (2007 SL No. 69)

remaining provisions commenced on date of assent

amending legislation—

**Transport Legislation and Another Act Amendment Act 2007 No. 6 pts 1, 2 (amends 2006 No. 21 above) (this Act is amended, see amending legislation below)**

date of assent 28 February 2007

ss 1–2 commenced on date of assent

remaining provisions never proclaimed into force and om 2008 No. 31 s 24

amending legislation—

**Transport Legislation Amendment Act 2008 No. 31 ss 1, 23–24 (amends 2007 No. 6 above)**

date of assent 21 May 2008

commenced on date of assent

**Transport Legislation and Another Act Amendment Act 2007 No. 6 pts 1, 7**

date of assent 28 February 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 2007 (2007 SL No. 93)

**Legal Profession Act 2007 No. 24 ss 1–2, 770 sch 1**

date of assent 28 May 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2007 (2007 SL No. 151)

**Transport Operations Legislation Amendment Act 2007 No. 25 s 1, pt 3**

date of assent 28 May 2007

commenced on date of assent

**Transport Legislation Amendment Act 2008 No. 31 s 1, pt 6**

date of assent 21 May 2008

commenced on date of assent

**Transport and Other Legislation Amendment Act 2008 No. 67 s 1, pt 7 div 2**

date of assent 1 December 2008

commenced on date of assent

**Transport (New Queensland Driver Licensing) Amendment Act 2008 No. 71 pts 1, 4 (this Act is amended, see amending legislation below)**

date of assent 11 December 2008

ss 1–2 commenced on date of assent

s 15 (to the extent it ins s 63E) never proclaimed into force and om 2010 No. 19 s 219(1)

remaining provisions commenced 24 July 2010 (2010 SL No. 181)

amending legislation—



**Transport and Other Legislation Amendment Act 2010 No. 13 ss 1, 2(2)(b), 58, 66–69 (amends 2008 No. 71 above)**

date of assent 1 April 2010

ss 1–2 commenced on date of assent

remaining provisions commenced on date of assent (see s 2(2)(b))

**Transport and Other Legislation Amendment Act (No. 2) 2010 No. 19 ss 1, 2(5)(b), ch 4 pt 5 ss 217, 219–220 (amends 2008 No. 71 above)**

date of assent 23 May 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 23 July 2010 (2010 SL No. 184)

**Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009 No. 24 ss 1–2, ch 13 pt 11**

date of assent 26 June 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2009 (2009 SL No. 252)

**Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009 No. 25 pt 1, s 83 sch**

date of assent 11 August 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 2 November 2009 (2009 SL No. 241)

**Sustainable Planning Act 2009 No. 36 ss 1–2, 872 sch 2**

date of assent 22 September 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 2009 (2009 SL No. 281)

**Transport and Other Legislation Amendment Act 2009 No. 47 s 1, pt 4**

date of assent 19 November 2009

commenced on date of assent

**Transport and Other Legislation Amendment Act 2010 No. 13 ss 1, 2(1), 2(2)(c), ch 3 pt 3, ch 4 pt 4**

date of assent 1 April 2010

ss 1–2, ch 4 pt 4 commenced on date of assent (see s 2(2)(c))

remaining provisions commenced 24 July 2010 (2010 SL No. 183)

**Transport and Other Legislation Amendment Act (No. 2) 2010 No. 19 s 1, ch 2 pt 23, ch 4 pt 7**

date of assent 23 May 2010

commenced on date of assent

**Public Interest Disclosure Act 2010 No. 38 ss 1–2, 78 sch 3**

date of assent 20 September 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2011 (2010 SL No. 305)

**Personal Property Securities (Ancillary Provisions) Act 2010 No. 44 ss 1–2, ch 4 pt 58**

date of assent 14 October 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 30 January 2012 (2011 SL No. 262)

**Transport and Other Legislation Amendment Act 2011 No. 12 ss 1–2(1), pt 10**

date of assent 14 April 2011

ss 1–2 commenced on date of assent

s 72 commenced 1 July 2011 (2011 SL No. 97)

remaining provisions commenced on date of assent

**Fiscal Repair Amendment Act 2012 No. 25 ss 1, 2(6)(b), 195 sch**

date of assent 21 September 2012

ss 1–2 commenced on date of assent

remaining provisions commenced 12 November 2012 (2012 SL No. 192)

**Gold Coast Waterways Authority Act 2012 No. 38 ss 1–2(1), pt 13 div 5**

date of assent 5 December 2012

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2012 (see s 2(1))

## 6 List of annotations

### Short title

s 1 amd 1994 No. 87 s 3 sch 1

### Commencement

s 2 om R3 (see RA s 37)

### Objectives of this Act

s 3 amd 1994 No. 49 s 6 sch 2; 1996 No. 63 s 4; 2005 No. 22 s 19; 2010 No. 19 s 236

### Dictionary

s 4 Note—prev s 4 contained definitions for this Act. Definitions are now located in the schedule (Dictionary). Annotations for definitions contained in prev s 4 are located in annotations for the schedule.  
pres s 4 sub 2006 No. 21 s 47

### Meaning of “certificate of compliance”

s 5 amd 2006 No. 21 s 48

### Meaning of “ship”

s 10 amd 2006 No. 21 s 49

### Meaning of “commercial ship”, “fishing ship” and “recreational ship”, and related provision

s 10A ins 2006 No. 21 s 50  
amd 2009 No. 36 s 872 sch 2

### General application of Act to ships

s 11 amd 2006 No. 21 s 51

### Relationship with Commonwealth Navigation Act generally

s 12 amd 2001 No. 79 s 69

**Marine incidents required to be reported under Commonwealth Navigation Act**  
**s 14** om 2002 No. 15 s 42

**Exempting of person or ship from regulatory provision**

**s 18A** ins 1996 No. 63 s 5  
 amd 2002 No. 29 s 16 sch 1; 2012 No. 38 s 122

**Development of marine safety strategies**

**s 19** amd 2006 No. 21 s 52

**Development of marine safety implementation programs**

**s 25** amd 2010 No. 19 s 146

**Achieving an appropriate balance between safety and cost**

**s 29** amd 2005 No. 22 s 20

**What is a standard**

**s 31** amd 1994 No. 49 s 6 sch 2; 1996 No. 63 s 6; 2002 No. 29 s 16 sch 1; 2010 No. 19 s 237

**What mechanisms ensure safety**

**s 34** amd 2002 No. 29 s 16 sch 1; 2006 No. 21 s 53

**How is safety in Queensland waters achieved**

**s 35** amd 2001 No. 79 s 70

**How are harbour masters and shipping inspectors accountable**

**s 36** amd 1996 No. 37 s 147, sch 2; 2002 No. 29 s 16 sch 1; 2009 No. 25 s 83 sch

**General safety obligation of ship designers, ship builders and marine surveyors about condition of ships**

**prov hdg** amd 2006 No. 21 s 54(1)

**s 40** amd 2006 No. 21 s 54(2)–(3)

**Relationship between regulatory provisions and general safety obligations about the condition of ships**

**s 42** amd 1995 No. 9 s 92 sch 1; 1995 No. 58 s 3 sch; 1996 No. 63 s 7; 2000 No. 46 s 3 sch; 2002 No. 29 s 16 sch 1; 2006 No. 21 s 55

**Standards**

**s 45** amd 1994 No. 49 s 6 sch 2; 2002 No. 29 s 16 sch 1; 2010 No. 19 s 238; 2012 No. 25 s 195 sch

**Notice of proposal to prepare draft standard**

**s 47** amd 1996 No. 63 s 8; 2002 No. 29 s 16 sch 1; 2006 No. 21 s 56; 2010 No. 19 s 239

**Preparation of draft standard**

**s 48** amd 1996 No. 63 s 9; 2002 No. 29 s 16 sch 1; 2010 No. 19 s 240

**Notice of draft standard**

**s 49** amd 1996 No. 63 s 10; 2002 No. 29 s 16 sch 1; 2010 No. 19 s 241

**Making of standard**

**s 50** amd 1996 No. 63 s 11; 2002 No. 29 s 16 sch 1; 2010 No. 19 s 242

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**Interim standards**

s 51 amd 2002 No. 29 s 16 sch 1

**Approval of standard**

s 52 om 1994 No. 49 s 6 sch 2

**Regulations prevail over standards**

s 53 amd 1994 No. 49 s 6 sch 2

**Amendment of standards**

s 54 amd 2002 No. 29 s 16 sch 1  
sub 2010 No. 19 s 243

**Application of Acts Interpretation Act 1954**

s 54A ins 2010 No. 19 s 243

**PART 5—REGISTRATION, LICENSING, PERMITS AND ACCREDITATION**

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**Regulation may require registration of ship**

s 56 amd 2006 No. 21 s 57

**Contravention of registration obligations**

s 57 amd 2006 No. 21 s 58

**Cancellation, suspension and amendment of registration**

s 59 amd 2002 No. 29 s 16 sch 1

**Regulation may require licences**

s 60 amd 1995 No. 9 s 92 sch 1; 2001 No. 36 s 10; 2006 No. 21 s 59

**Grant, amendment and renewal of licences**

s 62 amd 2002 No. 29 s 16 sch 1; 2006 No. 21 s 60; 2008 No. 71 s 14 (amd 2010 No. 13 s 66)

**When licence is void**

s 62A ins 2010 No. 13 s 80

**Cancellation, suspension and amendment of licences**

s 63 amd 2002 No. 29 s 16 sch 1; 2006 No. 21 s 61; 2010 No. 13 s 81

**Smartcard marine licence indicator is property of the State**

s 63AA ins 2008 No. 71 s 14A (amd 2010 No. 13 s 67)

**Division 3A—Biometric data and other information relating to marine licences**

div hdg ins 2008 No. 71 s 15

**Obtaining digital photo and digitised signature**

s 63A ins 2008 No. 71 s 15 (amd 2010 No. 13 s 68(1))

**Extending shelf life of digital photo and digitised signature**

s 63AB ins 2008 No. 71 s 15 (amd 2010 No. 13 s 68(1))

**Using digital photo and digitised signature**

s 63B ins 2008 No. 71 s 15 (amd 2010 No. 13 s 68(1))

**Restricted access to a digital photo**

s 63C ins 2008 No. 71 s 15 (amd 2010 No. 13 s 68(2))

**Deleting digital photo and digitised signature from register or similar record**

s 63D ins 2008 No. 71 s 15

**Restricted access to information stored electronically on a smartcard marine licence indicator**

s 63F ins 2008 No. 71 s 15 (amd 2010 No. 19 s 219(2)–(3))  
amd 2008 No. 71 s 17 (amd 2010 No. 19 s 220)

**Retention period for digital photo and digitised signature**

s 63G ins 2008 No. 71 s 15 (amd 2010 No. 13 s 68(3))

**Annual report about access to digital photos**

s 63H ins 2008 No. 71 s 15

**Division 3B—Restricted release of information about marine licences**

div hdg ins 2008 No. 71 s 15

**Restricted written release of information**

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s 63I ins 2008 No. 71 s 15  
amd 2010 No. 13 s 68(4)–(5); 2011 No. 12 s 70(2)–(3)

**Restricted oral release of particular information**

s 63J ins 2011 No. 12 s 71

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s 64 amd 2006 No. 21 s 62

**Regulation may provide for accreditation**

s 65 amd 2006 No. 21 s 63

**Building of ships**

s 66A ins 1995 No. 9 s 92 sch 1

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s 67 amd 1996 No. 63 s 12; 2002 No. 29 s 16 sch 1

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s 70 amd 2002 No. 29 s 16 sch 1

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**General manager may approve ship design**

prov hdg amd 2002 No. 29 s 16 sch 1

s 70A ins 1996 No. 63 s 13  
amd 2002 No. 29 s 16 sch 1

**Statements in certificate of survey**

s 70B ins 1996 No. 63 s 13  
amd 2002 No. 29 s 16 sch 1

**Protection from liability**

s 70C ins 1996 No. 63 s 13

**Pilotage areas and compulsory pilotage areas**

prov hdg sub 2001 No. 79 s 71(1)

s 71 amd 2001 No. 79 s 71(2)

**Appointment of harbour masters**

s 74 amd 2002 No. 29 s 16 sch 1

**Limitations on powers of a harbour master**

s 76 amd 2002 No. 29 s 16 sch 1

**Harbour master to consult with Gold Coast Waterways Authority**

s 77A ins 2012 No. 38 s 123

**End of appointment**

s 78 amd 2002 No. 29 s 16 sch 1

**Delegation by harbour master**

s 79 amd 2000 No. 5 s 373 sch 3; 2002 No. 29 s 16 sch 1; 2006 No. 21 s 64

**Identity cards**

s 80 amd 2006 No. 21 s 65

**General limitation on harbour master's power to give directions under subdivision**

s 86 amd 2006 No. 21 s 66

**Direction may be general or particular**

s 86A ins 2006 No. 21 s 67

**Power of Minister to require directions**

s 87 amd 2006 No. 21 s 68

**Owner of ship lost, abandoned or stranded**

s 87A ins 2005 No. 49 s 43

amd 2008 No. 31 s 35

**Direction to master about operation of ship in relation to a marine incident area**

s 87B ins 2006 No. 21 s 69

**Direction to master about operation of ship in relation to pilotage area**

prov hdg sub 2006 No. 21 s 70(1)

s 88 amd 2006 No. 21 s 70(2)–(3); 2009 No. 47 s 17

**Direction to person in charge of a place**

s 89 amd 2006 No. 21 s 71

**Direction to person carrying out works**

s 90 amd 2006 No. 21 s 72

**Direction to person about obstruction**

s 91 amd 2006 No. 21 s 73

**Direction to person to put out certain lights etc.**

s 92 amd 2006 No. 21 s 74

**Harbour master may carry out direction**

s 93 sub 2006 No. 21 s 75

**Recovery by State of expenses of carrying out direction**

s 94 amd 1995 No. 9 s 92 sch 1; 2006 No. 21 s 76

**Temporary closure of pilotage area by harbour master**

s 95 amd 2005 No. 49 s 44

**Pilots required for ship navigation in compulsory pilotage area**

prov hdg sub 2001 No. 79 s 72(1)

s 99 amd 2001 No. 36 s 11; 2001 No. 79 s 72(2)

**Immunity for pilots and general employers**

s 101 sub 2001 No. 36 s 12

amd 2001 No. 79 s 73; 2002 No. 29 s 16 sch 1

**Restriction on conduct of ship by pilot**

s 102A ins 2001 No. 36 s 13

amd 2002 No. 29 s 16 sch 1

**General manager may set up aid to navigation**

prov hdg amd 2002 No. 29 s 16 sch 1

s 105 amd 2002 No. 29 s 16 sch 1

**Gold Coast Waterways Authority may set up aid to navigation**

s 105A ins 2012 No. 38 s 124

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s 107A ins 2002 No. 15 s 43

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s 108 sub 1996 No. 63 s 14

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**s 114** sub 1996 No. 63 s 14  
om 2010 No. 19 s 244

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om 2010 No. 19 s 244

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**s 117** sub 1996 No. 63 s 14  
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**s 118** sub 1996 No. 63 s 14  
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s 125 amd 2006 No. 21 s 77; 2007 No. 25 s 10

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s 125A ins 2005 No. 49 s 45

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s 125B ins 2005 No. 49 s 45

**Investigation process into marine incident**

s 126 amd 2002 No. 29 s 16 sch 1

**Regular reports of marine incidents to Minister**

s 127 amd 1996 No. 37 s 147 sch 2; 1996 No. 63 s 15; 2006 No. 21 s 78

**Chief executive to arrange for services of staff and financial matters for board of inquiry**

s 134 amd 2002 No. 29 s 16 sch 1

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prov hdg amd 2006 No. 21 s 79(1)  
 s 139 amd 2006 No. 21 s 79(2)

**Board's powers on inquiry**

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 s 154 amd 2002 No. 29 s 16 sch 1

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**Appointment of shipping inspectors**

s 157 amd 1995 No. 50 s 3 sch; 2002 No. 29 s 16 sch 1; 2012 No. 38 s 125

**Conditions of appointment of shipping inspectors**

s 158 amd 2002 No. 29 s 16 sch 1

**Shipping inspector's identity card**

s 159 amd 2002 No. 29 s 16 sch 1

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**Power to require production of marine safety equipment**

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**Direction if shipping inspector reasonably believes ship is not safe or can not be operated safely**

s 171 sub 2006 No. 21 s 82

**Shipping inspector may direct ship is surveyed and order repairs**

s 172 amd 1996 No. 63 s 16; 2006 No. 21 s 83

**Shipping inspector may declare that ship is unseaworthy and must not be operated**

s 172AA ins 2006 No. 21 s 84

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s 172A ins 2001 No. 79 s 74  
amd 2010 No. 19 s 245

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s 175A ins 2001 No. 79 s 75  
amd 2006 No. 21 s 85; 2010 No. 44 s 223

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s 176 sub 2006 No. 21 s 86

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s 177 sub 2006 No. 21 s 86

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s 201      amd 2001 No. 79 s 77; 2002 No. 29 s 16 sch 1; 2006 No. 21 s 90; 2010 No. 13 s 113

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s 202A     ins 2006 No. 21 s 91

**Dealing with order under s 202A**

s 202B     ins 2006 No. 21 s 91

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s 202C     ins 2006 No. 21 s 91  
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**Regulation-making power in relation to restricted licence**

s 202I     ins 2006 No. 21 s 91

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s 202J     ins 2006 No. 21 s 91

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s 202K     ins 2006 No. 21 s 91  
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amd 2009 No. 24 s 1757**Internal review of decisions****prov hdg** sub 2009 No. 24 s 1758(1)  
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s 203E ins 2006 No. 21 s 92  
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s 204 sub 2006 No. 21 s 92

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s 205 amd 2002 No. 29 s 16 sch 1; 2002 No. 21 s 93; 2008 No. 31 s 38

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s 205A ins 2005 No. 49 s 48  
amd 2006 No. 21 s 96; 2007 No. 6 s 32(1)–(2)

**Notice of change in police information about a person**

s 205AA ins 2007 No. 6 s 33

**Chief executive or general manager may enter into arrangement about giving and receiving information with commissioner of the police service**

s 205AB ins 2007 No. 6 s 33

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**Electronic search to verify person is holder of licence**

s 205B ins 2006 No. 21 s 95

**Signals of distress**

s 206 amd 2006 No. 21 s 96

**General manager's power to fix speed limits for ships**

prov hdg amd 2002 No. 29 s 16 sch 1  
s 206A ins 1996 No. 63 s 18  
amd 2002 No. 29 s 16 sch 1; 2004 No. 9 s 8A; 2012 No. 38 s 128

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s 206AA ins 2012 No. 38 s 129

**Approval of forms**

s 206B ins 2001 No. 79 s 78

**Regulations may give effect to agreements or documents about ships approved by Australian entity**

s 212 sub 2004 No. 9 s 9

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s 213 amd 1999 No. 15 s 137 sch 1

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s 215 amd 2001 No. 79 s 79; 2004 No. 40 s 4B  
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**Detention of ships for unpaid fees etc.**

s 216 amd 2002 No. 29 s 16 sch 1

**Regulations about aquatic events and activities**

s 217 amd 2006 No. 21 s 98

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s 218 amd 2005 No. 22 s 22; 2006 No. 21 s 99; 2012 No. 38 s 130

**General manager's power to fix other matters by gazette notice**

s 219 prev s 219 exp 4 June 1995 (see s 219(2))  
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s 221 exp 4 June 1994 (see s 221(2))

**Vesting of assets and liabilities of Board**

s 222 exp 4 June 1994 (see s 222(2))

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**Existing approvals, consents, licences, permits etc.**

s 224 amd 1995 No. 50 s 3 sch; 1996 No. 63 s 19 (retro); 2001 No. 79 s 80  
exp in relation to a matter mentioned in s 224(6)(a) on 31 December 1996 (see  
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s 224A ins 1996 No. 63 s 20 (retro)  
exp 31 December 1995 (see s 224A(4))

**Division 2—Provisions for Maritime Safety Queensland Act 2002**

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s 225 prev s 225 amd 1995 No. 50 s 3 sch  
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**Transition of chief executive's functions to general manager**

**s 226** prev s 226 exp 3 June 1995 (see s 226(3))  
pres s 226 ins 2002 No. 29 s 16 sch 1

**Exemptions**

**s 227** prev s 227 exp 3 June 1995 (see s 227(3))  
pres s 227 ins 2002 No. 29 s 16 sch 1

**Standards**

**s 228** prev s 228 amd 1995 No. 50 s 3 sch  
exp 3 June 1996 (see s 228(3))  
pres s 228 ins 2002 No. 29 s 16 sch 1

**Approvals**

**s 229** prev s 229 amd 1995 No. 50 s 3 sch  
exp 3 June 1996 (see s 229(3))  
pres s 229 ins 2002 No. 29 s 16 sch 1

**Appointments**

**s 230** prev s 230 ins 1996 No. 63 s 21  
exp 9 December 1998 (see s 230(3))  
pres s 230 ins 2002 No. 29 s 16 sch 1

**Agreements**

**s 231** prev s 231 exp 3 June 1995 (see s 231(3))  
pres s 231 ins 2002 No. 29 s 16 sch 1

**Fixing of speed limits for ships**

**s 232** prev s 232 exp 3 December 1995 (see s 232(3))  
pres s 232 ins 2002 No. 29 s 16 sch 1

**Notices**

**s 233** prev s 233 om R1 (RA s 40)  
pres s 233 ins 2002 No. 29 s 16 sch 1

**Other things done by chief executive**

**s 234** prev s 234 om R1 (RA s 40)  
pres s 234 ins 2002 No. 29 s 16 sch 1

**Particular references to chief executive**

**s 235** ins 2002 No. 29 s 16 sch 1

**Division 3—Provisions for Maritime and Other Legislation Amendment Act 2006**

**div hdg** ins 2006 No. 21 s 105

**References in other legislation to words defined in s 4**

**s 236** ins 2006 No. 21 s 105

**Provisions relating to the power of harbour masters before the commencement to give directions**

**s 237** ins 2006 No. 21 s 105

**Reasonable excuse for not reporting marine incident**

**s 238** ins 2006 No. 21 s 105



**Direction or notice given by shipping inspector before the commencement**

s 239 ins 2006 No. 21 s 105

**Property seized under s 175A before the commencement**

s 240 ins 2006 No. 21 s 105

**Enforcement order or interim enforcement order only if offence committed after the commencement**

s 241 ins 2006 No. 21 s 105

**Disqualification under s 202A only if offence committed after the commencement**

s 242 ins 2006 No. 21 s 105

**Decisions made before the commencement**

s 243 ins 2006 No. 21 s 105

**Existing licences to drive speedboats and other recreational ship master's licences**

s 244 ins 2006 No. 21 s 105

**Division 4—Provision for Transport Legislation Amendment Act 2008, part 6**

div 4 (s 245) ins 2008 No. 31 s 39

**Division 5—Provision for Gold Coast Waterways Authority Act 2012**

div 5 (s 246) ins 2012 No. 38 s 131

**PART 20—TRANSITIONAL PROVISIONS FOR MARITIME SAFETY  
QUEENSLAND ACT 2002**pt hdg orig pt 20 hdg om R1 (RA s 40)  
prev pt 20 hdg ins 2002 No. 29 s 16 sch 1  
om 2006 No. 21 s 103**SCHEDULE—DICTIONARY**Note—definitions for this Act were originally located in prev s 4.  
ins 2006 No. 21 s 105def “**accredited**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105def “**aid to navigation**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105def “**appropriate appeal court**” om 2009 No. 24 s 1761(1)  
def “**approval**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105def “**approved form**” ins 2004 No. 9 s 8 sch  
om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105def “**Australian legal practitioner**” amd 2007 No. 24 s 770 sch 1  
def “**authorised action**” ins 2008 No. 67 s 253def “**building**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105def “**causes**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105def “**certificate of compliance**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105

Endnotes

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- def “**certificate of survey**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def “**Commonwealth Navigation Act**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def “**compulsory pilotage area**” ins 2001 No. 79 s 68  
om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def “**connected with Queensland**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def “**coordination plan**” om from prev s 4 2006 No. 21 s 47
- def “**criminal history**” reloc from s 205A 2007 No. 6 s 32(3)
- def “**digital photo**” ins 2008 No. 71 s 17
- def “**digitised signature**” ins 2008 No. 71 s 17
- def “**electronic communication**” ins 2008 No. 71 s 17
- def “**general manager**” ins 2002 No. 29 s 16 sch 1  
om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def “**Gold Coast waters**” ins 2012 No. 38 s 132
- def “**Gold Coast Waterways Authority**” ins 2012 No. 38 s 132
- def “**government legal officer**” amd 2007 No. 24 s 770 sch 1
- def “**grievous bodily harm**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def “**harbour master**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def “**holder**” ins 2008 No. 71 s 17
- def “**interstate voyage**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def “**licence**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def “**marine history**” ins 2011 No. 12 s 73
- def “**marine incident**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def “**marine licence**” ins 2008 No. 71 s 17
- def “**marine licence indicator**” ins 2008 No. 71 s 17
- def “**master**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def “**most recent digital photo**” ins 2008 No. 71 s 17 (amd 2010 No. 13 s 69(3))
- def “**most recent digitised signature**” ins 2008 No. 71 s 17 (amd 2010 No. 13 s 69(3))
- def “**MSQ**” ins 2002 No. 29 s 16 sch 1  
om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105  
amd 2008 No. 31 s 40
- def “**notice offence**” amd 2009 No. 47 s 19
- def “**obstruct**” om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def “**operation**” om from prev s 4 2006 No. 21 s 47

- def **“overseas voyage”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“owner”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“personal watercraft”** ins 2008 No. 71 s 17
- def **“person in control”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“pilot”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“pilotage area”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“place”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“port”** sub 1994 No. 49 s 6 sch 2  
om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“port authority”** ins 2001 No. 36 s 9  
om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“port operator”** ins 2010 No. 19 s 147
- def **“premises”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“prescribed smartcard Act”** ins 2008 No. 71 s 17
- def **“Queensland intrastate voyage”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“retention period”** ins 2008 No. 71 s 17
- def **“reviewed decision”** amd 2009 No. 24 s 1761(2)
- def **“set up”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“shelf life”** ins 2008 No. 71 s 17 (amd 2010 No. 13 s 69(2))
- def **“ship”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“shipping inspector”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“smartcard marine licence indicator”** ins 2008 No. 71 s 17 (amd 2010 No. 13 s 69(1)–(2))
- def **“standard”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105
- def **“take”** ins 2008 No. 71 s 17
- def **“vehicle”** om from prev s 4 2006 No. 21 s 47  
ins 2006 No. 21 s 105

**SCHEDULE 1—REPEALED ACTS**

om R1 (see RA s 40)

**SCHEDULE 2—AMENDMENTS**

om R1 (see RA s 40)

## **7 Forms notified or published in the gazette**

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## **8 Information about retrospectivity**

Retrospective amendments that have been consolidated are noted in the list of legislation and list of annotations. Any retrospective amendment that has not been consolidated is noted in an editor's note to the text.

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