



Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016

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Queensland

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Transport Operations (Marine Safety— Domestic Commercial Vessel National Law Application) Act 2016

**An Act to apply as a law of this State a national law relating to
domestic commercial vessels**

Part 1 Preliminary

1 Short title

This Act may be cited as the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Purpose of Act

- (1) The purpose of this Act is to adopt in this State a national approach to the regulation of marine safety in relation to domestic commercial vessels (the domestic commercial vessel national law).
- (2) For the purpose mentioned in subsection (1), this Act—
 - (a) applies the Commonwealth domestic commercial vessel national law as a law of this State; and
 - (b) makes provision to enable the Commonwealth domestic commercial vessel national law and the applied law of this State to be administered on a uniform basis by the Commonwealth (and by State officials as delegates of

the Commonwealth) as if they constituted a single law of the Commonwealth.

4 Definitions

(1) In this Act—

applied provisions means the Commonwealth domestic commercial vessel national law that applies as a law of this State because of section 5, including any modification under part 8.

Commonwealth administrative laws means the following Commonwealth Acts, regulations or other legislative instruments—

- (a) the *Administrative Appeals Tribunal Act 1975*, other than part IVA;
- (b) the *Freedom of Information Act 1982*;
- (c) the *Ombudsman Act 1976*;
- (d) the *Privacy Act 1988*;
- (e) the regulations and other legislative instruments in force under any of those Acts.

Commonwealth domestic commercial vessel national law means the provisions of the following Acts, regulations or other legislative instruments—

- (a) the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth (being the provisions applying as a law of the Commonwealth because of section 4 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth);
- (b) the regulations and other legislative instruments in force under that Law;
- (c) any other provision of a Commonwealth Act (or of a regulation or other legislative instrument in force under a Commonwealth Act) that is of a savings or transitional

- (3) Subsection (2) does not operate to exclude a law of this State relating to marine safety that would not otherwise be excluded by the Commonwealth domestic commercial vessel national law.
- (4) A regulation may provide that the Commonwealth domestic commercial vessel national law applies under this section as if an amendment to that law—
 - (a) made by a law of the Commonwealth; and
 - (b) stated in the regulation;had not taken effect.

6 Interpretation of Commonwealth domestic commercial vessel national law

- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies—
 - (a) as a law of this State in relation to the interpretation of the applied provisions; and
 - (b) so applies as if the applied provisions were a Commonwealth Act or regulation or other legislative instrument under a Commonwealth Act.
- (2) The *Acts Interpretation Act 1954* does not apply to the applied provisions.

Part 3 Functions and powers under applied provisions

7 Functions and powers of National Regulator and other authorities and officers

The National Regulator and other authorities and officers mentioned in the applied provisions have the same functions and powers under the applied provisions as they have under the Commonwealth domestic commercial vessel national law, as that law applies to the Commonwealth.

8 Delegations by the National Regulator

Any delegation by the National Regulator under the Commonwealth domestic commercial vessel national law, as that law applies to the Commonwealth, is taken to extend to, and have the effect for the purposes of, the corresponding provision of the applied provisions.

Part 4 Offences

9 Object of pt 4

- (1) The object of this part is to further the purpose of this Act by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example, the following—
 - (a) the investigation and prosecution of offences;
 - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences;
 - (c) proceedings relating to a matter mentioned in paragraph (a) or (b);
 - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind mentioned in paragraph (c);
 - (e) the sentencing, punishment and release of persons convicted of offences;
 - (f) fines, penalties and forfeitures;
 - (g) infringement notices in connection with offences;
 - (h) liability to make reparation in connection with offences;
 - (i) proceeds of crime;
 - (j) spent convictions.

- (3) For the purposes of this part, offences include contraventions for which a civil penalty may be imposed.

10 Application of Commonwealth criminal laws to offences against applied provisions

- (1) The relevant Commonwealth laws apply as laws of this State in relation to an offence against the applied provisions as if the provisions were a law of the Commonwealth and not a law of this State.
- (2) For the purposes of a law of this State, an offence against the applied provisions—
 - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if the provisions were a law of the Commonwealth; and
 - (b) is taken not to be an offence against the laws of this State.
- (3) Subsection (2) has effect for the purposes of a law of this State other than as provided by a regulation made under this Act.
- (4) In this section—

relevant Commonwealth law means a law of the Commonwealth relating to offences, including, for example, a law relating to a purpose mentioned in section 9(2).

11 Functions and powers conferred on Commonwealth officers and authorities relating to offences

- (1) A Commonwealth law applying because of section 10 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Commonwealth domestic commercial vessel national law also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act

as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding provision of the Commonwealth domestic commercial vessel national law.

12 No double jeopardy for offences against applied provisions

- (1) This section applies if—
 - (a) an act or omission is an offence against the applied provisions and an offence against the Commonwealth domestic commercial vessel national law; and
 - (b) the offender has been punished for that offence under the Commonwealth domestic commercial vessel national law.
- (2) The offender is not liable to be punished for the offence under the applied provisions.

Part 5 Administrative laws

13 Application of Commonwealth administrative laws to applied provisions

- (1) The Commonwealth administrative laws apply as laws of this State to any matter arising in relation to the applied provisions as if the provisions were a law of the Commonwealth and not a law of this State.
- (2) For the purposes of a law of this State, a matter arising in relation to the applied provisions—
 - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if the provisions were a law of the Commonwealth; and
 - (b) is taken not to be a matter arising in relation to laws of this State.

- (3) Subsection (2) has effect for the purposes of a law of this State other than as provided by a regulation made under this Act.
- (4) Any provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.
- (5) For the purposes of this section, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth, as that provision applies as a law of this State, to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

14 Functions and powers conferred on Commonwealth officers and authorities

- (1) A Commonwealth administrative law applying because of section 13 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power for a matter arising in relation to the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

Part 6 Fees and fines

15 Fees payable to officers or employees of State acting as delegates

A regulation may prescribe fees payable to this State for anything done under the Commonwealth domestic commercial vessel national law, or the applied provisions, by a delegate or subdelegate of the National Regulator who is an officer or employee of this State or an agency of this State.

16 Infringement notice fines

- (1) An amount paid to this State by the National Regulator under section 10 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth in relation to an infringement notice is payable into the consolidated fund.
- (2) An amount payable by this State under section 10(2) of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth in relation to an infringement notice is payable out of the consolidated fund.

17 Fines, fees etc not otherwise payable to State

- (1) All fees, penalties, fines and other money that, under the applied provisions, are authorised or directed to be payable by or imposed on a person, other than an amount ordered to be refunded to another person, must be paid to the Commonwealth.
- (2) Subsection (1) does not apply to fees mentioned in section 15.

Part 7 Miscellaneous

18 Things done for multiple purposes

The validity of a licence, certificate or other thing issued, given or done for the purposes of the applied provisions is not affected only because it was issued, given or done also for the purposes of the Commonwealth domestic commercial vessel national law.

19 Reference in Commonwealth law to a provision of another law

For the purposes of sections 10 and 13, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of those sections.

20 References to domestic commercial vessel national law and domestic commercial vessel national regulation

- (1) In an Act, a reference to the *domestic commercial vessel national law* is a reference to—
 - (a) the Commonwealth domestic commercial vessel national law; and
 - (b) the applied provisions; and
 - (c) if the context requires or permits, the Commonwealth domestic commercial vessel national law as it applies as a law of another State (with or without modification).
- (2) In an Act, a reference to the *domestic commercial vessel national regulation* is a reference to—
 - (a) the Commonwealth domestic commercial vessel regulation; and
 - (b) the Commonwealth domestic commercial vessel regulation as it applies as part of the applied provisions; and
 - (c) if the context requires or permits, the Commonwealth domestic commercial vessel regulation as it applies as a law of another State (with or without modification).
- (3) In an Act, a reference to a stated provision of the domestic commercial vessel national law is a reference to—
 - (a) the provision of that number in the Marine Safety (Domestic Commercial Vessel) National Law set out in schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth, as it applies as part of the domestic commercial vessel national law; and
 - (b) if the context requires or permits, the regulations and other legislative instruments made under that provision.
- (4) In an Act, a reference to a stated provision of the domestic commercial vessel national regulation is a reference to the provision of that number in the Commonwealth domestic

commercial vessel regulation, as it applies as part of the domestic commercial vessel national law.

(5) In this section—

Commonwealth domestic commercial vessel regulation means the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* of the Commonwealth.

21 Provision of information and assistance by Queensland information holder

- (1) Despite any other Act or law, a Queensland information holder is authorised, on the Queensland information holder's own initiative or at the request of the National Regulator—
- (a) to provide the National Regulator with information (including personal information and information given in confidence) held by the department and reasonably required by the National Regulator for administering the domestic commercial vessel national law; and
 - (b) to provide the National Regulator with other assistance reasonably required by the National Regulator to exercise a function under the domestic commercial vessel national law.
- (2) Nothing done, or authorised to be done, by a Queensland information holder in acting under subsection (1)—
- (a) constitutes a breach of, or default under, an Act or other law; or
 - (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
 - (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom or in any other way); or
 - (d) constitutes a civil or criminal wrong; or
 - (e) terminates an agreement or obligation, or fulfils any condition that allows a person to terminate an agreement

or obligation, or gives rise to any other right or remedy;
or

(f) releases a surety or any other obligee wholly or in part from an obligation.

(3) In this section—

Queensland information holder means—

(a) the chief executive; or

(b) an officer or employee of the department who has access to information held by the department in the ordinary course of performing duties in the department.

22 Regulation-making power

The Governor in Council may make regulations, not inconsistent with this Act or the applied provisions, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act or the applied provisions.

Part 8 Transitional provisions

23 Definitions for part

In this part—

commencement day means the day this part commences.

transitional expiry day means the day 12 months after the commencement day.

24 Application of transitional regulation provisions

(1) The transitional regulation provisions apply under the applied provisions with the changes mentioned in this section.

- (2) A reference in the transitional regulation provisions to a day mentioned in column 1 of the following table is taken to be a reference to the day mentioned in column 2 of the table—

Column 1	Column 2
1 July 2013	the commencement day
1 January 2014	the day 6 months after the commencement day
30 June 2016	the day before the transitional expiry day
1 July 2016	the transitional expiry day

- (3) Subsection (4) applies to a TOMSA authority for a domestic commercial vessel that, but for the subsection, would not be an old certificate of operation under section 16 of the national regulation.
- (4) The TOMSA authority is taken to be an old certificate of operation issued for the domestic commercial vessel for the purposes of—
- (a) section 16 of the national regulation, other than paragraph (a)(iv) of the definition *trigger date*; and
 - (b) the modification of section 48 of the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth by section 16 of the national regulation.
- (5) For the purposes of subsection (4), section 16 of the national regulation applies with necessary changes.
- (6) In this section—

national regulation means the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013* of the Commonwealth.

TOMSA authority, for a domestic commercial vessel, means an authorisation under the *Transport Operations (Marine*

Safety) Act 1994 that, immediately before the commencement day, entitles the vessel to operate under that Act.

transitional regulation provisions means Division 2.2 of the national regulation.

25 Application of existing marine order about certificates of operation

The *Marine Order 504 (Certificates of operation — national law) 2013* of the Commonwealth applies under the applied provisions with the following changes—

- (a) the reference in sections 7(1) and 11(1)(e)(i) to 30 June 2013 is taken to be a reference to the day immediately before the commencement day;
- (b) section 11(1)(e)(ii) does not apply.

26 Existing exemptions

- (1) This section applies to an exemption in force, under section 143 of the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth, immediately before the commencement day.
- (2) From the commencement day, the exemption is taken also to be granted under the corresponding provision of the applied provisions.
- (3) The exemption applies subject to sections 27 and 28.

27 Application of existing exemption about vessel identifiers

The *Marine Safety (Vessel identifiers) Exemption 2013* of the Commonwealth applies under the applied provisions, as provided under section 26, with the following changes—

- (a) the reference in section 5(1)(a) to 30 June 2013 is taken to be a reference to the day before the commencement day;

- (b) the reference in section 5(2) to 30 June 2016 is taken to be a reference to the day before the transitional expiry day.

28 Application of existing exemption about certificates of survey

The *Marine Safety (Certificates of survey) Exemption 2015* of the Commonwealth applies under the applied provisions, as provided under section 26, with the following changes—

- (a) an existing vessel is taken to include a vessel in existence on the commencement day to which the applied provisions apply;
- (b) the reference in schedule 1, division 3 to an existing vessel is taken to include a reference to a vessel mentioned in paragraph (a);
- (c) the references in schedule 1, divisions 3 and 4 to 30 June 2013 are taken to be references to the day before the commencement day;
- (d) the reference in schedule 1, division 3 to 30 June 2016 is taken to be a reference to the day before the transitional expiry day.

29 Application of s 8

Section 8 applies to a delegation whether it was made before, on or after the commencement day.

30 Existing subdelegations

- (1) This section applies to a subdelegation to an officer or employee of the State in force, under section 11(3) of the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth, immediately before the commencement day.

- (2) From the commencement day, the subdelegation is taken to extend to, and have the effect for the purposes of, the corresponding provision of the applied provisions.