



Queensland

Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016

Act No. 3 of 2016



Queensland

Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016

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Queensland

Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016

Act No. 3 of 2016

An Act to amend the Criminal Proceeds Confiscation Act 2002, the Maritime Safety Queensland Act 2002, the Transport Operations (Marine Pollution) Act 1995, the Transport Operations (Marine Safety) Act 1994 and the Transport Operations (Road Use Management) Act 1995, and to amend the Acts mentioned in schedule 1, for particular purposes

[Assented to 4 March 2016]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016*.

2 Commencement

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

Part 2 Amendment of Transport Operations (Marine Safety) Act 1994

3 Act amended

- (1) This part amends the *Transport Operations (Marine Safety) Act 1994*.

Note—

See also the amendments in schedule 1.

- (2) If this part or schedule 1 amends a provision that is renumbered in this part or schedule 1, the renumbering takes effect immediately after the amendment of the provision.

4 Amendment of s 3 (Objectives of this Act)

Section 3(3) and (4)—

omit, insert—

-
- (3) These objectives are to be achieved for Queensland regulated ships mainly by—
- (a) imposing general safety obligations to ensure seaworthiness and other aspects of marine safety; and
 - (b) 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 Queensland regulated ship may be taken to sufficiently comply with a general safety obligation even though a competent person has not issued a survey report for the ship.

5 Omission of s 5 (Meaning of *certificate of compliance*)

Section 5—

omit.

6 Amendment of s 9 (Meaning of *owner*)

Section 9(1), from ‘not’—

omit, insert—

not—

- (a) the person is registered as the ship’s owner under this Act or a law of another jurisdiction; or
- (b) for a ship that is a domestic commercial vessel—the person holds a certificate of operation for the ship under the national law.

7 Replacement of s 10A (Meaning of *commercial ship, fishing ship and recreational ship*, and related provision)

Section 10A—

[s 8]

omit, insert—

10A Meaning of *Queensland regulated ship*

A *Queensland regulated ship* is—

- (a) a recreational ship; or
- (b) a ship (an *other Queensland regulated ship*) that—
 - (i) is not a domestic commercial vessel because of—
 - (A) the combined operation of the national law, sections 7(3)(d) and 7(4); or
 - (B) a regulation made under the national law, section 7(5)(b); or
 - (ii) is mentioned in the national regulation, section 9(2); or
 - (iii) is a tender to a ship mentioned in subparagraph (i) or (ii).

10B Meaning of *recreational ship*

- (1) A *recreational ship* is—
 - (a) a ship used only for private recreation; or
 - (b) a tender to a ship mentioned in paragraph (a).
- (2) A regulation may prescribe circumstances in which a ship may be taken to be used only for private recreation.

8 Insertion of new s 14

After section 13—

insert—

14 Relationship with the national law

- (1) The national law applies to particular activities of, and matters relating to, domestic commercial vessels.
- (2) This Act does not apply to a domestic commercial vessel to the extent the national law applies to the vessel.

Note—

See the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cwlth), section 6(2) for circumstances in which a law of the State may apply in relation to domestic commercial vessels.

- (3) Generally, this Act expressly identifies a provision that does not apply to a domestic commercial vessel by stating the provision applies only to a Queensland regulated ship (which does not include a domestic commercial vessel).
- (4) However, the absence of a statement of a kind mentioned in subsection (3) does not limit the operation of subsection (2).

9 Amendment of s 15 (Section 11 subject to certain provisions)

- (1) Section 15(1), first dot point—

omit.

- (2) Section 15(1)—

insert—

- section 54 (that deals with the application of part 5, division 1)
- section 59A (that deals with the application of part 5, division 2)
- section 61A (that deals with the application of part 5, division 3)

[s 10]

10 Amendment of s 18A (Exempting of person or ship from regulatory provision)

Section 18A—

insert—

- (9) Also, if a provision of a regulation is repealed, a regulation may declare that—
 - (a) an exemption in force for the repealed provision, immediately before its repeal, is taken to be given for a provision of a regulation corresponding to the repealed provision; and
 - (b) for the purpose of a declaration under paragraph (a), a reference in the exemption to the repealed provision is taken to be a reference to the corresponding provision.

11 Omission of pt 2 (Marine safety strategies)

Part 2—

omit.

12 Amendment of s 28 (To which ships does this Act apply)

- (1) Section 28(2), after ‘Navigation Act’—

insert—

or the national law

- (2) Section 28(2), note, ‘section 12(1)’—

omit, insert—

sections 12(1) and 14

- (3) Section 28(3), after ‘Navigation Act’—

insert—

or the national law

- (4) Section 28(5), after ‘Navigation Act’—

insert—

, the national law

13 Replacement of s 30 (What is the system that is established)

Section 30—

omit, insert—

30 What is the system established

- (1) Part 4, division 1 imposes general safety obligations for Queensland regulated ships on the following people in the maritime industry—
 - (a) a competent person who issues a survey report for a ship;
 - (b) a ship's owner (including an operator);
 - (c) a ship's master and crew.
- (2) Part 4, division 2 imposes general safety obligations for all ships on the following people in the maritime industry—
 - (a) a ship's pilot;
 - (b) the managing pilotage entity for a ship in a compulsory pilotage area.
- (3) 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.

14 Amendment of s 31 (What is a standard)

- (1) Section 31(1), after 'obligations'—

insert—

for Queensland regulated ships in part 4, division 1

- (2) Section 31(2), from 'the building,'—

[s 15]

omit, insert—

the crewing and operation of Queensland regulated ships.

15 Amendment of s 32 (What happens if a person does not comply with a relevant standard)

(1) Section 32(1), after ‘obligation’—

insert—

under section 40 or 41

(2) Section 32(2), example—

omit, insert—

Example—

If a ship owner or master operates a recreational ship that does not comply with a standard about the equipment the ship should be equipped with to achieve safety, the noncompliance with the standard may mean section 41 has been contravened. However, the ship owner may satisfy the court the ship was safe, despite noncompliance with the standard.

16 Replacement of s 33 (What happens if a ship has a certificate of compliance or survey)

Section 33—

omit, insert—

33 Role of survey reports in satisfying general safety obligations

A survey report issued by a competent person for a Queensland regulated ship may be used to establish that a general safety obligation under section 40 or 41 has been complied with in whole or part.

Note—

See section 42(3)(a).

17 Amendment of s 34 (What mechanisms ensure safety)

(1) Section 34(a), ‘or accredited’—

omit.

(2) Section 34(a), ‘or accreditation’—

omit.

(3) Section 34(b) to (d)—

omit, insert—

(b) owners and masters of Queensland regulated ships are responsible for ensuring the ships are safe;

(c) owners, masters, crew members and other persons involved with the operation of Queensland regulated ships are responsible for ensuring the ships are operated safely;

(d) pilots who have the conduct of ships are responsible for ensuring the ships are operated safely;

(4) Section 34(e), ‘ships’—

omit, insert—

Queensland regulated ships

(5) Section 34(f)—

omit, insert—

(f) some Queensland regulated ships need to be registered under this Act;

(6) Section 34(h)—

omit, insert—

(h) the general manager may require a shipping inspector to investigate a marine incident, or suspected marine incident, involving a Queensland regulated ship;

[s 18]

18 Amendment of s 38 (Does the Act mention everything that will appear in the regulations and standards)

Section 38, example, ‘a ship’—

omit, insert—

a Queensland regulated ship

19 Replacement of pt 4, hdg and pt 4, div 1, hdg

Part 4, heading and part 4, division 1, heading—

omit, insert—

Part 4

General safety obligations

Division 1

General safety obligations for Queensland regulated ships

39A Application of div 1

This division applies only to Queensland regulated ships.

Note—

See the national law, part 3 for general safety duties relating to domestic commercial vessels.

20 Amendment of s 40 (General safety obligation of ship designers, ship builders and marine surveyors about condition of ships)

(1) Section 40, heading—

omit, insert—

40 General safety obligation of competent persons about condition of ships

(2) Section 40(1)—

omit, insert—

- (1) A competent person who issues a survey report for a ship must ensure that each statement made in the report about the ship's seaworthiness is correct in every material particular.

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

- (3) Section 40(2)(a), 'certificate'—

omit, insert—

survey report

- (4) Section 40(2), from 'accredited' to 'surveyor'—

omit, insert—

competent person

21 Amendment of s 42 (Relationship between regulatory provisions and general safety obligations about the condition of ships)

- (1) Section 42, heading—

omit, insert—

42 Relationship between regulatory provisions and general safety obligations for competent persons and ship owners and masters

- (2) Section 42(1), definition *certificate of compliance*—

omit.

- (3) Section 42(3)(a)—

omit, insert—

- (a) to satisfy compliance with the general safety provision, it was reasonable for the person to rely on a survey report issued by a competent person, other than the person, that was in force for the ship and covered the safety issue (completely or partly); or

[s 22]

22 Amendment of s 43 (General obligation on persons involved with operation of ship to operate it safely)

- (1) Section 43, heading—

omit, insert—

43 General safety obligation on persons involved with operation of ship

- (2) Section 43(1), ‘, pilot’—

omit.

- (3) Section 43(2)(b)(i)—

omit, insert—

- (i) a condition of the ship’s registration under this Act that is about safety; or

- (4) Section 43(3), ‘pilot,’—

omit.

- (5) Section 43—

insert—

- (4A) This section does not apply to a ship’s pilot.

Note—

See section 45 for the obligation on pilots of ships.

- (6) Section 43(4A) and (5)—

renumber as section 43(5) and (6).

23 Relocation and renumbering of pt 4, div 2

- (1) Part 4, division 2—

relocate to after section 219 and *renumber* as part 18, division 2.

- (2) Sections 45 to 54A—

renumber as sections 219A to 219J.

24 Relocation and renumbering of s 43A (General obligation on managing pilotage entity to provide piloted movement of ships safely)

Section 43A—

relocate to part 4, division 2 as inserted by this Act and *renumber* as section 46.

25 Insertion of new pt 4, div 2

Part 4, after section 44—

insert—

Division 2 Other general safety obligations

45 General safety obligation on pilot who has conduct of ship

- (1) A pilot who has the conduct of a ship must not cause the ship to be operated unsafely.
Maximum penalty—500 penalty units or imprisonment for 1 year.
- (2) Without limiting subsection (1), a pilot causes a ship to be operated unsafely if the pilot causes the ship to be operated in a way that—
 - (a) causes a marine incident; or
 - (b) contravenes—
 - (i) a condition of the ship's registration under this Act that is 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 pilot commits an indictable offence

[s 26]

and is liable to a maximum penalty of 5000 penalty units or imprisonment for 2 years.

26 Replacement of pt 5, hdg and pt 5, div 1 and pt 5, div 2, hdg and ss 56 and 57

Part 5, heading and part 5, division 1 and part 5, division 2, heading and sections 56 and 57—

omit, insert—

Part 5 Registration, licensing and permits

Division 1 Registration of Queensland regulated ships

54 Application of div 1

A provision of this division applies only to Queensland regulated ships declared by regulation to be ships to which the provision applies.

Note—

See the national law, part 4, division 3 for provisions about certificates of operation for domestic commercial vessels.

55 Definition for div 1

In this division—

registered means registered under this Act.

56 Regulation may require registration of ship

A regulation may require that a ship be registered as a recreational ship or an other Queensland regulated 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.

Maximum penalty—200 penalty units.

- (2) If a ship is registered as a recreational ship, the ship's owner or master must not operate the ship other than as a recreational ship or as otherwise provided for under a regulation.

Maximum penalty—200 penalty units.

- (3) If a ship is registered as an other Queensland regulated ship, the ship's owner or master must not operate the ship for private recreation other than as provided for under a regulation.

Maximum penalty—200 penalty units.

- (4) 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.

27 Replacement of pt 5, div 3, hdg (Licensing of masters, crew members and pilots)

Part 5, division 3, heading—

omit, insert—

Division 2

Licensing of masters and crew members of Queensland regulated ships

[s 28]

59A Application of div 2

A provision of this division applies only to Queensland regulated ships declared by regulation to be ships to which the provision applies.

Note—

See the national law, part 4, division 4 for provisions about certificates of competency for particular duties or functions for domestic commercial vessels.

28 Amendment of s 60 (Regulation may require licences)

Section 60(1)(c)—

omit.

29 Amendment of s 61 (Operation of ship as master etc. without required licence)

(1) Section 61(1) and (2)—

insert—

Maximum penalty—40 penalty units.

(2) Section 61(3)—

omit.

30 Insertion of new pt 5, div 3 and pt 5, div 4, hdg

After section 61—

insert—

Division 3 Licensing of pilots

61A Application of div 3

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

61B Regulation may require pilot licence

- (1) A regulation may require a person to hold a licence 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.

61C Operation of ship as pilot without required licence

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.

Division 4 General licence provisions

31 Amendment of s 62 (Grant, amendment and renewal of licences)

Section 62(3)(b), ‘ships’—

omit, insert—

Queensland regulated ships

32 Omission of pt 5, divs 4 and 5

Part 5, divisions 4 and 5—

omit.

33 Amendment of s 87A (Owner of ship lost, abandoned or stranded)

- (1) Section 87A(2), ‘registered’—

omit, insert—

[s 34]

recorded

(2) Section 87A(5)—

omit, insert—

(5) In this section—

recorded owner means—

- (a) for a domestic commercial vessel—the holder of the vessel’s certificate of operation under the national law; or
- (b) for another ship—the person in whose name the ship is registered under this Act or a law of another jurisdiction, whether inside or outside Australia.

34 Insertion of new pt 11, div 1, hdg

Part 11, before section 123—

insert—

Division 1 Preliminary

35 Amendment of s 123 (What is a *marine incident*)

Section 123(1)(f) to (j)—

omit, insert—

- (f) significant damage, or danger of significant damage, to a ship; or
- (g) significant damage caused by a ship’s operations; or
- (h) danger of significant damage to a structure caused by a ship’s operations; or
- (i) danger to a person caused by a ship’s operations.

36 Insertion of new pt 11, div 2, hdg and s 123A

After section 123—

insert—

**Division 2 Marine incidents involving
Queensland regulated ship**

123A Application of div 2

This division applies to a marine incident only if it involves at least 1 Queensland regulated ship.

Note—

See the national law, sections 88 to 90 in relation to marine incidents, as defined in that law, involving domestic commercial vessels.

37 Amendment of s 124 (Duties of masters to help if a marine incident happens involving 2 or more ships)

Section 124(2), ‘each ship’—

omit, insert—

a Queensland regulated ship

38 Amendment of s 125 (Marine incidents must be reported)

(1) Section 125(1) and (2)(a), ‘a ship’—

omit, insert—

a Queensland regulated ship

(2) Section 125(2)(b), ‘ship’s’—

omit, insert—

Queensland regulated ship’s

[s 39]

39 Amendment of s 125B (Failure to comply with declaration of exclusion zone by general manager)

Section 125B(1), '125A'—

omit, insert—

130A

40 Relocation and renumbering of ss 125A and 125B

Sections 125A and 125B—

relocate to part 11, division 3 as inserted by this Act, and *renumber* as sections 130A and 130B.

41 Amendment of s 126 (Investigation process into marine incident)

Section 126(3)—

omit, insert—

- (3) If, after considering the report, the general manager is satisfied that a marine incident has happened, the general manager may, in the way prescribed by regulation, cancel, suspend or amend an approval of a Queensland regulated ship or person involved in the incident.

42 Amendment of s 128 (Report and any recommendations to be tabled)

Section 128, '14'—

omit, insert—

30

43 Insertion of new pt 11, div 3, hdg

After section 128—

insert—

Division 3 Other obligations and exclusion zones

44 Amendment of s 130 (Obligation of master to give help)

(1) Section 130(1), ‘master of a ship’—

omit, insert—

master of a Queensland regulated ship

(2) Section 130(2), ‘the ships’—

omit, insert—

any Queensland regulated ships

(3) Section 130(3), ‘requisitioned ship’—

omit, insert—

Queensland regulated ship requisitioned under
subsection (2)

(4) Section 130(5), (6), and (7), ‘master of a ship’—

omit, insert—

master of a Queensland regulated ship

(5) Section 130, after subsection (7)—

insert—

Note—

See also the national law, sections 85 to 87 in relation to
obligations on masters of domestic commercial vessels.

45 Omission of pt 12 (Boards of inquiry)

Part 12—

omit.

46 Amendment of s 153 (Functions of shipping inspectors)

(1) Section 153(d), after ‘incidents’—

[s 47]

insert—

involving Queensland regulated ships

(2) Section 153(e)—

omit.

47 Amendment of s 155 (Powers of shipping inspectors under this part)

Section 155(2)(b)—

omit, insert—

(b) places mentioned as a place of business—

(i) in an approval; or

(ii) in a document about a domestic commercial vessel issued by the national regulator under the national law; and

48 Amendment of pt 13, div 3, hdg (Powers of shipping inspectors)

Part 13, division 3, heading, ‘Powers’—

omit, insert—

General powers

49 Amendment of s 162 (Entry to place by shipping inspectors)

(1) Section 162(c), after ‘approval’—

insert—

, or a national law document,

(2) Section 162—

insert—

(2) In this section—

national law document means a document about a domestic commercial vessel issued by the national regulator under the national law.

50 Relocation and renumbering of s 167A (Power to require production of marine safety equipment)

Section 167A—

relocate to part 13, division 3A as inserted by this Act, and *renumber* as section 170B.

51 Insertion of new pt 13, div 3A

After section 170—

insert—

Division 3A Additional powers for Queensland regulated ships

170A Application of div 3A

This division applies only to a Queensland regulated ship.

Note—

For similar powers of marine safety inspectors in relation to domestic commercial vessels, see the national law—

- section 99 (which provides for vessel monitoring powers)
- section 109 (which provides for giving directions)
- section 111 (which provides for issuing prohibition notices).

52 Amendment of s 171 (Direction if shipping inspector reasonably believes ship is not safe or can not be operated safely)

Section 171(4), after ‘particular’—

insert—

[s 53]

type or

53 Amendment of s 172 (Shipping inspector may direct ship is surveyed and order repairs)

Section 172(2), from ‘that’—

omit, insert—

to obtain a survey report for the ship, as specified by the inspector, from a competent person.

54 Amendment of s 172A (Other directions)

Section 172A(1), after ‘registered’—

insert—

under this Act

55 Amendment of s 175 (Power to require production of documents)

(1) Section 175(1), after ‘Act’—

insert—

or the national law

(2) Section 175(2)—

omit, insert—

(2) The person must, unless the person has a reasonable excuse, produce the document—

(a) if the shipping inspector has boarded a ship under section 165(1) and the document is required to be kept on the ship under this Act, an exemption given under section 18A or the national law—immediately after the shipping inspector makes the requirement; or

- (b) otherwise—at a reasonable time and place nominated by the shipping inspector when making the requirement.

Maximum penalty—40 penalty units.

56 Amendment of s 186 (Unlawful interference with ship)

- (1) Section 186, heading, ‘ship’—

omit, insert—

Queensland regulated ship

- (2) Section 186(1) and (3), ‘a ship’—

omit, insert—

a Queensland regulated ship

57 Amendment of s 202D (Restricted licence for disqualified person)

- (1) Section 202D(1)(a)(i), ‘44, 57, 61’—

omit, insert—

44, 45, 57, 61, 61C

- (2) Section 202D(6)(b)(i)—

omit.

- (3) Section 202D(6)(b)(ii) to (iv)—

renumber as section 202D(6)(b)(i) to (iii).

- (4) Section 202D(8), ‘and class’—

omit.

58 Amendment of s 202E (Other limitations on ordering a restricted licence)

Section 202E—

insert—

[s 59]

- (5) Also, in subsection (2)(a), the reference to a licence includes a licence of a type or class that is no longer a type or class of licence granted under this Act.

59 Amendment of s 208 (Marine safety regulations—generally)

Section 208(2), from ‘ships and handling’—

omit, insert—

Queensland regulated ships.

60 Insertion of new pt 19, div 7

Part 19—

insert—

Division 7 Provisions for Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016

Subdivision 1 Preliminary

248 Definitions for division

In this division—

amended Act means this Act as in force after the commencement.

amendment Act means the *Transport Operations (Marine Safety) and Other Legislation Amendment Act 2016*.

old regulation means the *Transport Operations (Marine Safety) Regulation 2004* as in force before the commencement.

relevant ship see section 249.

unamended Act means this Act as in force before the commencement.

Subdivision 2 Provisions about registration of relevant ships

249 Purpose of subdivision

The purpose of this subdivision is to transition matters about the registration under the unamended Act of a commercial ship that, on the commencement, is an other Queensland regulated ship (a *relevant ship*).

Note—

For a ship that, on the commencement, is a domestic commercial vessel, see the national regulation, section 16 and the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*.

250 Existing registration

- (1) This section applies to a relevant ship that, immediately before the commencement, was registered under the unamended Act as a commercial ship.
- (2) From the commencement, the ship is taken to be registered under the amended Act as an other Queensland regulated ship.
- (3) The registration—
 - (a) continues for the remaining term of the registration unless it is earlier cancelled or surrendered; and
 - (b) is subject to the conditions to which it was subject immediately before the commencement; and

[s 60]

- (c) if, immediately before the commencement, the registration is suspended under the unamended Act—continues to be subject to the suspension; and
 - (d) may be amended, suspended, cancelled or surrendered under the amended Act.
- (4) However, the registration can not be renewed under the amended Act.
- (5) Also, the registration is subject to the following conditions—
- (a) if the old regulation, section 108 applied to the ship immediately before the commencement—a condition that a person who is the owner or master of the ship must not operate the ship in waters other than the following waters—
 - (i) the waters stated in the USL code for a ship of the ship’s class;
 - (ii) the waters in any other operational area stated for the ship in the old regulation, section 108;
 - (b) if, immediately before the commencement, under the unamended Act, a person must not operate the ship as its master or act as a crew member unless the person holds a particular licence—a condition that a person must not operate the ship as its master or act as a crew member unless the person holds that licence;

Examples—

- 1 If, under the old regulation, section 88(2), a person must not operate the ship as its master unless the person holds a licence of at least a particular class of certificate, the registration is subject to the condition that a person must not operate the ship as its master unless the person

holds a licence of at least that class of certificate.

- 2 If, under an exemption under the unamended Act, section 18A, a person must not operate the ship as its master unless the person holds a recreational marine driver licence, the registration is subject to the condition that a person must not operate the ship as its master unless the person holds a recreational marine driver licence.
- (c) a condition that a person who is the owner or master of the ship must not carry on the ship, or on a part of the ship, more persons than is stated for the ship, or for the part of the ship, in the ship's registration certificate, unless the person has a reasonable excuse.

251 Existing applications for registration

- (1) This section applies to an application for registration of a relevant ship made under the unamended Act but not decided before the commencement.
- (2) The application—
 - (a) is taken to be an application for registration of the ship under the amended Act as an other Queensland regulated ship; and
 - (b) must be decided under the amended Act.

252 Reviews of decisions about registration made before the commencement

- (1) This section applies to a review relating to a decision about the registration of a relevant ship—
 - (a) started but not decided before the commencement; or
 - (b) started after the commencement.

[s 60]

- (2) The review must be decided under the unamended Act as if the amendment Act had not been enacted.
- (3) If the effect of the review is that the ship must be registered as a commercial ship under the unamended Act, the ship must be registered under the amended Act as an other Queensland regulated ship.
- (4) If the effect of the review is that the registration of the ship as a commercial ship under the unamended Act must be amended or the suspension of the registration of the ship as a commercial ship under the unamended Act must be lifted, the amendment or lifting of the suspension must be given effect in relation to the registration of the ship as continued under section 250.
- (5) If the effect of the review is that the registration of the ship as a commercial ship under the unamended Act should not have been cancelled—
 - (a) from the relevant day, the ship is taken to be registered under the amended Act as an other Queensland regulated ship; and
 - (b) the registration is subject to the conditions to which it was subject immediately before it was cancelled; and
 - (c) section 250(3)(a), (c) and (d) and (4) and (5) apply to the ship's registration.
- (6) In this section—

relevant day means—

 - (a) if the decision of the review takes effect on a day before commencement—the commencement; or

- (b) otherwise—the day the decision of the review takes effect.

review means—

- (a) a review of an original decision under section 203B; or
- (b) a review of a reviewed decision under section 203C.

Subdivision 3 Other transitional provisions

253 Existing certificate of compliance for Queensland regulated ship

- (1) This section applies to a certificate of compliance for a Queensland regulated ship in force under the unamended Act immediately before the commencement.
- (2) From the commencement, the certificate of compliance is taken to be a survey report issued for the ship by a competent person.

254 Protection of persons continued

The unamended Act, sections 70C and 139 continue to apply in relation to acts done or omissions made before the commencement, despite their repeal.

255 Existing investigations

- (1) This section applies if—
 - (a) a marine incident happened before the commencement, or the general manager believes that a marine incident may have happened before the commencement even though it has not been reported; and

[s 60]

- (b) the matter does not involve a Queensland regulated ship; and
 - (c) at the commencement, an investigation of the matter has not been started, or has been started but not finished, under the unamended Act, section 126.
- (2) The general manager may require a shipping inspector to—
 - (a) investigate the matter; or
 - (b) if a shipping inspector has started but not finished investigating the matter—continue to investigate the matter.
- (3) The amended Act, section 126(2) to (4) apply in relation to the investigation despite section 123A.

256 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision of a savings or transitional nature to allow or facilitate the change from the operation of the unamended Act to the operation of the amended Act.
- (2) Without limiting subsection (1), a transitional regulation may provide for matters about the registration of a relevant ship for which this division does not provide or sufficiently provide.
- (3) A transitional regulation may have retrospective operation to a day that is not earlier than the day of the commencement.
- (4) A transitional regulation must declare it is a transitional regulation.
- (5) This section and any transitional regulation expire 1 year after the commencement.

257 Commercial ship references

A reference in an instrument under this Act to a commercial ship is, if the context permits, taken to be—

- (a) if the ship is a domestic commercial vessel—a reference to a domestic commercial vessel; or
- (b) otherwise—a reference to an other Queensland regulated ship.

61 Amendment of schedule (Dictionary)

- (1) Schedule, definitions *approval*, *building*, *interstate voyage*, *marine licence*, *marine licence indicator* and *recreational ship*—

omit.

- (2) Schedule—

insert—

approval means any of the following under this Act—

- (a) registration of a Queensland regulated 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 Queensland regulated ships;
- (e) permission for a person—
 - (i) to operate a Queensland regulated ship as its master; or
 - (ii) to have the conduct of a ship as its pilot.

[s 61]

building, in relation to a ship, includes altering the ship, or replacing a part of the ship, if the alteration or replacement may affect marine safety.

competent person, for the issue of a survey report for a ship or a part of a ship, means—

- (a) an individual accredited under the national law as a marine surveyor to survey in a category that covers a ship's, or a part of a ship's, seaworthiness in relation to the aspects mentioned in the report; or
- (b) another individual who is able to competently decide a ship's, or a part of a ship's, seaworthiness in relation to the aspects mentioned in the report because of the individual's training, qualifications or experience in relation to the aspects.

domestic commercial vessel see the national law, section 7.

domestic commercial vessel national law see the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*, section 20.

domestic commercial vessel national regulation see the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*, section 20.

interstate voyage means an inter-State voyage as defined under the *Maritime Transport and Offshore Facilities Security Act 2003* (Cwlth).

marine licence means a licence to operate a recreational ship, or an other Queensland regulated ship that is a personal watercraft, as its master.

marine licence indicator means a written notice of the granting of a licence to operate a

recreational ship, or an other Queensland regulated ship that is a personal watercraft, as its master given to the person to whom the licence has been granted.

national law means the domestic commercial vessel national law.

national regulation means the domestic commercial vessel national regulation.

national regulator see the national law, section 9.

other Queensland regulated ship see section 10A(b).

Queensland regulated ship see section 10A.

recreational ship see section 10B.

survey report, for a ship or a part of a ship, means a report—

- (a) declaring the ship's or part's seaworthiness in relation to 1 or more of the following aspects—
 - (i) the ship's design;
 - (ii) the ship's construction;
 - (iii) the ship's safety equipment;
 - (iv) the ship's stability;
 - (v) another aspect of the ship's condition that may affect marine safety; and
- (b) containing information about the person who issued the report, including, in particular, information about the person's—
 - (i) accreditation as a marine surveyor under the national law; or

omit, insert—

TOMSA

66 Amendment of s 8 (Functions and powers of MSQ)

- (1) Section 8(1)(a), ‘the *Transport Operations (Marine Safety) Act 1994*’—

omit, insert—

TOMSA

- (2) Section 8(1)(a)(i) and (iii)—

omit.

- (3) Section 8(1)(a)(ii), from ‘for designing,’ to ‘ships’—

omit, insert—

under that Act

- (4) Section 8(1)(a)(iv), ‘ships’—

omit, insert—

Queensland regulated ships

- (5) Section 8(1)(a)(v), ‘other than recreational masters,’—

omit.

- (6) Section 8(1)(a)(ii) to (x)—

renumber as section 8(1)(a)(i) to (viii).

- (7) Section 8(1)(b)—

omit, insert—

(b) for the *Transport Operations (Marine Pollution) Act 1995*—to deal with the discharge of ship-sourced pollutants into coastal waters;

- (8) Section 8(1)—

insert—

[s 66]

(ca) for the domestic commercial vessel national law—to exercise powers and perform functions delegated or subdelegated to MSQ under that law and collect fees mentioned in the DCV application Act, section 15;

(cb) to develop strategies—

(i) for marine safety; and

Example—

education campaign for the safe use of recreational ships

(ii) to prevent the deliberate, negligent or accidental discharge of ship-sourced pollutants into coastal waters;

(9) Section 8(1)(ca) to (f)—

renumber as section 8(1)(d) to (h).

(10) Section 8(3)—

insert—

DCV application Act means the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*.

domestic commercial vessel national law see the DCV application Act, section 20.

Queensland regulated ship see TOMSA, section 10A.

[s 70]

certification are generally dealt with under the domestic commercial vessel national law.

- (2) General safety obligations for Queensland regulated ships and issues about their survey and registration are generally dealt with under the Marine Safety Act.

70 Omission of pt 3 (Marine pollution strategies)

Part 3—

omit.

71 Amendment of s 49 (Declared ship operating in prescribed nil discharge waters to be fitted with sewage holding device)

Section 49(2)(a)—

omit, insert—

- (a) the maximum number of persons the ship is permitted to carry under—
- (i) for a domestic commercial vessel—the domestic commercial vessel national law; or
 - (ii) for a Queensland regulated ship—the Marine Safety Act; and

72 Amendment of s 89 (Power to require production of documents)

- (1) Section 89(1)(a), '*Transport Operations (Marine Safety) Act 1994*'—

omit, insert—

Marine Safety Act

- (2) Section 89(1)—

insert—

(c) under the domestic commercial vessel national law.

73 Amendment of schedule (Dictionary)

Schedule—

insert—

domestic commercial vessel see the domestic commercial vessel national law, section 7.

domestic commercial vessel national law see the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*, section 20.

Queensland regulated ship see the Marine Safety Act, section 10A.

Part 6 Amendment of Transport Operations (Road Use Management) Act 1995

74 Act amended

This part amends the *Transport Operations (Road Use Management) Act 1995*.

75 Amendment of s 79 (Vehicle offences involving liquor or other drugs)

(1) Section 79(2E), from ‘class 1A’—

omit, insert—

non-recreational vessels that carry, or are authorised to carry, more than 12 passengers.

(2) Section 79—

[s 76]

insert—

(2EA) For subsection (2E)—

authorised to carry, for a non-recreational vessel, means authorised to carry under—

- (a) for an other Queensland regulated ship—the *Transport Operations (Marine Safety) Act 1994*; or
- (b) for a domestic commercial vessel—the domestic commercial vessel national law.

domestic commercial vessel national law see the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*, section 20.

non-recreational vessel means—

- (a) an other Queensland regulated ship under the *Transport Operations (Marine Safety) Act 1994*; or
- (b) a domestic commercial vessel under the domestic commercial vessel national law.

passenger, for a vessel, means a passenger as defined in part B of the National Standard for Commercial Vessels.

Part 7 Minor and consequential amendments

76 Acts amended

Schedule 1 amends the Acts it mentions.

Schedule 1 Minor and consequential amendments

section 76

Maritime Safety Queensland Act 2002

- 1 **Section 11A(4), definition *appropriate person*, paragraph (c), ‘the *Transport Operations (Marine Safety) Act 1994*’—**
omit, insert—

TOMSA

- 2 **Section 13(4)(a), ‘the *Transport Operations (Marine Safety) Act 1994*’—**

omit, insert—

TOMSA

Police Powers and Responsibilities Act 2000

- 1 **Section 195A, definition *smartcard transport authority*, paragraph (b), after ‘schedule’—**

insert—

1

Transport Operations (Marine Pollution) Act 1995

- 1 Section 4(1), ‘the schedule’—**
omit, insert—
schedule 1

- 2 Section 127(3)(a), ‘Transport Operations (Marine Safety) Act 1994’—**
omit, insert—
Marine Safety Act

- 3 Schedule, definition *Commonwealth Navigation Act, ‘1912’*—**
omit, insert—
2012

- 4 Schedule, definition *gross tonnage, ‘Measurement’*—**
omit.

- 5 Schedule—**
number as schedule 1.

Transport Operations (Marine Safety) Act 1994

- 1 Section 4, ‘the schedule’—**
omit, insert—
schedule 1

-
- 2 Section 43A, heading—**
omit, insert—
43A General safety obligation on managing pilotage entity
- 3 Section 48(1), ‘47’—**
omit, insert—
219C
- 4 Section 50(2), ‘49’—**
omit, insert—
219E
- 5 Section 51(1), from ‘the following’—**
omit, insert—
sections 219C to 219F have not been complied with.
- 6 Section 54(2), ‘47 to 50’—**
omit, insert—
219C to 219F
- 7 Part 5, division 3B—**
renumber as part 5, division 5.
- 8 Section 102A(3), ‘61(3)’—**
omit, insert—
61C
- 9 Section 170(5), after ‘immediately’—**
insert—

after

10 Section 199B(4), penalty, ‘for subsection (4)’—
omit.

11 Section 200A, ‘148, 149,’—
omit.

12 Section 202A(1)(a)(i), ‘44, 57, 61’—
omit, insert—
44, 45, 57, 61, 61C

13 Section 203C(3)—
insert—

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

14 Section 203D(b)—
omit.

15 Section 203D(c)—
renumber as section 203D(b).

16 Section 205A(1), ‘ships’—
omit, insert—
Queensland regulated ships

17 Section 205AA(1)(a)(ii), ‘ships’—
omit, insert—
Queensland regulated ships

18 Part 18, heading—

omit, insert—

Part 18 Regulations and standards

Division 1 Regulations

19 Section 211(1), examples, ‘IV’—

omit, insert—

4

20 Section 212, example and editor’s note—

omit.

21 Section 213(3), penalty, ‘for subsection (3)’—

omit.

22 Schedule, definitions *accredited, certificate of compliance, certificate of survey, commercial ship and fishing ship*—

omit.

23 Schedule, definition *Commonwealth Navigation Act, ‘1912’*—

omit, insert—

2012

24 Schedule, definition *licence*, paragraph (a), after ‘60(1)’—

insert—

or 61B(1)

Schedule 1

25 Schedule—

insert—

registered, for part 5, division 1, see section 55.

26 Schedule, definition *standard*, ‘45’—

omit, insert—

219A

27 Schedule—

number as schedule 1.

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