



Navigation Act 1912

Act No. 4 of 1913 as amended

This compilation was prepared on 27 September 2012 taking into account amendments up to Act No. 56 of 2012

Volume 1 includes: Table of Contents
Sections 1–427

The text of any of those amendments not in force on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

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An Act relating to Navigation and Shipping

Part I—Introductory

1 Short title [see Note 1]

This Act may be cited as the *Navigation Act 1912*.

2 Application of Act

- (1) Except in so far as the application of this section is expressly excluded by a provision of this Act, this Act does not apply in relation to:
 - (a) a trading ship proceeding on a voyage other than an overseas voyage or an inter-State voyage;
 - (b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage;
 - (ba) a fishing fleet support vessel proceeding on a voyage other than an overseas voyage;
 - (c) an inland waterways vessel; or
 - (d) a pleasure craft;or in relation to its owner, master or crew.
- (2) A ship shall, for the purposes of this section, be deemed to be proceeding on a voyage from the time when it is got under way for the purpose of proceeding on the voyage until the time when it is got under way for the purpose of proceeding on another voyage.
- (3) A voyage of an Australian fishing vessel, being a ship that is regularly engaged in making voyages from a port or ports in Queensland, commencing at a port in that State and ending at the same port or another port in that State shall not be taken to be an overseas voyage by reason only that, as an incidental part of its fishing operations on that voyage, the ship calls at a port or ports in Papua New Guinea.
- (4) A ship's voyage is to be taken not to be an overseas voyage for the purposes of this Act if the voyage:
 - (a) commences in a port in an external Territory; and
 - (b) ends at a port in that Territory.

2A Act to bind the Crown

This Act binds the Crown in right of the Commonwealth, of each of the States and of the Northern Territory.

3 Act does not apply to naval ships etc.

Except where the contrary intention appears, this Act does not apply to or in relation to a ship belonging to, or operated by:

- (a) the Australian Defence Force; or
- (b) the naval, military or air forces of a country other than Australia.

4 Application of provisions relating to steam-ships

The provisions of this Act relating to steam-ships shall apply, with such modifications as are prescribed, to ships propelled by electricity or other mechanical power.

5 Application of the *Criminal Code*

Chapter 2 (except Part 2.5) of the *Criminal Code* applies to all offences created by this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

6 Interpretation

- (1) In this Act, unless the contrary intention appears:

agreement means:

- (a) in relation to a ship—the agreement between the owner of the ship, or a representative of the owner of the ship, and the crew of the ship; and
- (b) in relation to a seaman belonging to a ship—the agreement between the owner of the ship, or a representative of the owner of the ship, and the seaman.

approved form means a form approved by the Authority under section 6F.

articles of agreement has the same meaning as agreement.

Australian coastal sea means:

- (a) the territorial sea of Australia; and
- (b) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or Territory.

Australian fishing vessel means a fishing vessel that is registered, or entitled to be registered, in Australia or in relation to which an instrument under subsection 4(2) of the *Fisheries Management Act 1991* is in force.

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

bank includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

child: without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

civil penalty order has the meaning given by subsection 399B(4).

civil penalty provision has the meaning given by section 399A.

Collector means a Collector of Customs or other principal officer of Customs doing duty at a port under the Customs Act.

Commonwealth authority means an authority or body, whether a body corporate or not, established or incorporated for a public purpose by a law of the Commonwealth or of a Territory (other than the Northern Territory), and includes a body corporate incorporated under a law of the Commonwealth, of a State or of a Territory, being a body corporate in which the Commonwealth has a controlling interest.

Commonwealth ship means a ship:

- (a) that belongs to the Commonwealth or to a Commonwealth authority;
- (b) the beneficial interest in which is vested in the Commonwealth or in a Commonwealth authority; or
- (c) that is for the time being demised or sub-demised to, or in the exclusive possession of, the Commonwealth or a Commonwealth authority;

but does not include a ship:

- (d) that belongs to ANL Limited;
- (e) the beneficial interest in which is vested in ANL Limited; or
- (f) that is for the time being demised or sub-demised to, or in the exclusive possession of, ANL Limited.

consul includes:

- (a) ambassador, high commissioner, commissioner or other head of mission;
- (b) minister;
- (c) chargé d'affaires; and
- (d) counsellor, secretary or attaché of an embassy or other mission.

Co-ordinated Universal Time means Co-ordinated Universal Time as determined by the International Bureau of Weights and Measures.

de facto partner of a person has the meaning given by the *Acts Interpretation Act 1901*.

diplomatic or consular representative of Australia means a person appointed to hold, or to act in, any of the following offices (being an office of the Commonwealth) in a country or place outside Australia:

- (a) ambassador;
- (b) minister;
- (c) head of mission;
- (d) chargé d'affaires;
- (e) counsellor, secretary or attaché of an embassy, legation or other post; and
- (f) consul.

discharge means the certificate of discharge given to a seaman upon his or her discharge from a ship.

effects includes documents.

engage in conduct means:

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

equipment, in relation to a ship, includes every thing or article belonging to or to be used in connexion with, or necessary for the navigation and safety of, the ship and, in particular, includes boats, tackle, pumps, apparel, furniture, life-saving appliances, spars, masts, rigging, sails, fog signals, lights, signals of distress, signalling lamps, pilot ladders, radio equipment, medicines, medical and surgical stores and appliances, fire prevention, detecting and extinguishing appliances, inert gas systems, echo-sounding devices, mechanical pilot hoists, buckets, compasses, charts, axes, lanterns and gear and apparatus for loading or unloading, or otherwise handling, cargo.

fish includes turtles, dugong, crustacea, molluscs and any other living resources of the sea or of the seabed.

fishing fleet support vessel means:

- (a) a ship that is used wholly or primarily in activities in support of the fishing operations of an Australian fishing vessel or vessels; or
- (b) a ship that:
 - (i) is not a ship to which paragraph (a) applies; and
 - (ii) is being used in support of the fishing operations of an Australian fishing vessel or vessels; and
 - (iii) is not covered by a declaration under subsection (1C);
or
- (c) a ship that:
 - (i) is in the course of construction; and
 - (ii) is intended to be used wholly or primarily in activities in support of the fishing operations of an Australian fishing vessel or vessels;

but does not include:

- (d) a Commonwealth ship; or
- (e) an inland waterways vessel.

Note: for *in support of fishing operations* see subsection (1B).

fishing operations means:

- (a) the taking, catching or capturing of fish for trading or manufacturing purposes; and
- (b) the processing or carrying of the fish that are taken, caught or captured.

fishing vessel means:

- (a) a ship that is used wholly or principally for fishing operations; or
- (b) a ship that:
 - (i) is in the course of construction; and
 - (ii) is intended to be used wholly or principally for fishing operations;

but does not include:

- (c) a Commonwealth ship; or
- (d) an inland waterways vessel.

Government ship means a ship:

- (a) that belongs to the Commonwealth or a State or Territory;
- (b) the beneficial interest in which is vested in the Commonwealth or a State or Territory; or
- (c) that is for the time being demised or sub-demised to, or in the exclusive possession of, the Commonwealth or a State or Territory;

and includes a ship that belongs to, or that is operated by, the Australian Defence Force, but does not include a ship:

- (d) that belongs to a trading corporation that is an authority or agency of the Commonwealth or of a State or of a Territory;
- (e) the beneficial interest in which is vested in such a trading corporation; or
- (f) that is for the time being demised or sub-demised to, or in the exclusive possession of, such a trading corporation.

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

harbour means a harbour properly so called, whether natural or artificial, and includes an estuary, navigable river, creek, channel, haven, roadstead, dock, pier, jetty or other work in or at which ships can obtain shelter or ship and unship goods or passengers.

inland waterways vessel means a ship that is used, or, being a ship in the course of construction, is intended to be used, wholly in waters other than waters of the sea, but does not include a Commonwealth ship.

inter-State voyage, in relation to a ship, means a voyage (other than an overseas voyage) in the course of which the ship travels between:

- (a) a port in a State and a port in another State;
- (b) a port in a State and a port in a Territory; or
- (c) a port in a Territory and a port in another Territory;

whether or not the ship travels between 2 or more ports in any one State or Territory in the course of the voyage.

justice means Justice of the Peace.

master means a person having command or charge of a ship.

Medical Inspector of Seamen means a person appointed under section 123 to be a Medical Inspector of Seamen.

nuclear ship means a ship provided with a nuclear power plant.

officer means the master, a mate or an engineer of a ship.

officer of Customs means a person who is an officer for the purposes of the Customs Act.

officer of police means a member or special member of the Australian Federal Police or a member of the police force of a State or of a Territory.

official means a superintendent, a surveyor, a Medical Inspector of Seamen or any other person, including a Collector or other officer of Customs, required to perform functions or discharge duties for the purposes of this Act.

official log-book, in relation to a ship, means the official log-book kept by the master of the ship in pursuance of section 171 or in pursuance of the law of a country other than Australia.

order means an order made under this Act.

overseas voyage, in relation to a ship, means a voyage in the course of which the ship travels between:

- (a) a port in Australia and a port outside Australia;
- (b) a port in Australia and a place in the waters of the sea above the continental shelf of a country other than Australia;

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- (c) a port outside Australia and a place in the waters of the sea above the continental shelf of Australia;
 - (d) a place in the waters of the sea above the continental shelf of Australia and a place in the waters of the sea above the continental shelf of a country other than Australia;
 - (e) ports outside Australia; or
 - (f) places beyond the continental shelf of Australia;
- whether or not the ship travels between 2 or more ports in Australia in the course of the voyage.

owner of a ship means one or more of the following:

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

For the purposes of paragraphs (b) and (c), a person is not taken to have overall general control and management of a ship, or to have assumed responsibility for a ship, merely because he or she is the master or pilot of the ship.

parent: without limiting who is a parent of a person for the purposes of this Act, someone is the **parent** of a person if the person is his or her child because of the definition of **child** in this section.

passenger means a person carried on board a ship with the knowledge or consent of the owner, charterer, agent or master of the ship, not being:

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship;
- (b) a person on board the ship in pursuance of an obligation imposed on the master by any law (including a law of a country other than Australia) to assist shipwrecked, distressed or other persons or by reason of circumstances that could not have been prevented or forestalled by the owner, charterer, agent or master of the ship; or
- (c) a child under the age of one year.

pilot means a person who does not belong to, but has the conduct of, a ship.

pleasure craft means a ship that is used, or, being a ship in the course of construction, is intended to be used, wholly for recreational or sporting activities (whether or not let, or intended to be let, for hire or reward or consideration of any kind), but does not include a Commonwealth ship or an inland waterways vessel.

port includes place and harbour.

PPSA security interest (short for Personal Property Securities Act security interest) means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies, other than a transitional security interest within the meaning of that Act.

Note 1: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:

- (a) section 8 (interests to which the Act does not apply);
- (b) section 12 (meaning of ***security interest***);
- (c) Chapter 9 (transitional provisions).

Note 2: For the meaning of ***transitional security interest***, see section 308 of the *Personal Property Securities Act 2009*.

proper authority means:

- (a) a superintendent;
- (b) in relation to a prescribed country:
 - (i) a person who, under the law of that country, has powers, duties and functions similar to the powers, duties and functions of a superintendent under this Act; or
 - (ii) a diplomatic or consular representative of Australia or a consul of a prescribed country; or
- (c) in relation to a foreign country other than a prescribed country—a diplomatic or consular representative of Australia or a consul of a prescribed country.

radio equipment includes radio navigational aid equipment.

regulated ship has the meaning given by section 186G.

sea includes any waters within the ebb and flow of the tide.

seaman means a person employed or engaged in any capacity on board a ship on the business of the ship, other than:

- (a) the master of the ship;

- (b) a pilot; or
- (c) a person temporarily employed on the ship in port.

ship means any kind of vessel used in navigation by water, however propelled or moved, and includes:

- (a) a barge, lighter or other floating vessel;
- (b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water;
- (c) an off-shore industry mobile unit;

but (except in Part IIIA, in section 192B, in Division 1, 3, 4, 5, 6, 10, 11 or 13 of Part IV, in Part VII or IX, in Division 1, 3 or 4 of Part X or in Part XI) does not include an off-shore industry mobile unit that is not self-propelled.

stepchild: without limiting who is a stepchild of a person for the purposes of this Act, someone who is a child of a de facto partner of the person is the **stepchild** of the person, if he or she would be the person's stepchild except that the person is not legally married to the partner.

superintendent means a superintendent appointed under section 13.

survey authority means a corporation or association for the survey of shipping, approved by the Authority, in writing, for the purposes of this definition.

surveyor means a person appointed to be a surveyor under section 190.

the Court, in relation to proceedings under this Act, means the court exercising jurisdiction in respect of those proceedings.

the Customs Act means the *Customs Act 1901*.

the Marine Council means the Marine Council established under section 424.

the regulations, except in section 425 or to the extent that the regulations provide otherwise, includes orders made under this Act or pursuant to the regulations.

this Act includes the regulations and, except to the extent that the regulations provide otherwise, includes orders made under this Act.

trading ship means a ship that is used, or, being a ship in the course of construction, is intended to be used, for, or in connection with, any business or commercial activity and, without limiting the generality of the foregoing, includes a ship that is used, or, being a ship in the course of construction, is intended to be used, wholly or principally for:

- (a) the carriage of passengers or cargo for hire or reward; or
- (b) the provision of services to ships or shipping, whether for reward or otherwise;

but does not include a Commonwealth ship, a fishing vessel, a fishing fleet support vessel, an off-shore industry mobile unit, an off-shore industry vessel to which this Act applies, an inland waterways vessel or a pleasure craft.

wages includes emoluments.

- (1A) For the purposes of this section, a ship that has been launched, but has not been completed and delivered under the relevant building contract, shall be deemed to be a ship in the course of construction.
- (1B) For the purposes of this Act, activities in support of the fishing operations of a fishing vessel include:
 - (a) the storage and transport of fish taken, caught or captured by the fishing vessel; and
 - (b) the provision of food, fuel and other supplies to the fishing vessel while it is engaged in fishing operations; and
 - (c) the transport of crew members to and from the fishing vessel while it is engaged in fishing operations.
- (1C) The Authority may declare, in writing, that a class of ships specified in the declaration are not to be taken to be fishing fleet support vessels under paragraph (b) of the definition of **fishing fleet support vessel** in subsection (1).
- (2) A reference in this Act to failure to do an act or thing shall be read as including a reference to refusal or neglect to do that act or thing.
- (4A) Where, in pursuance of articles of agreement, a person becomes a member of the crew of a ship, he or she is to, until he or she ceases to be a member of the crew of the ship, be deemed, for the purposes of this Act, to belong to the ship.

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- (4B) A person who, in pursuance of articles of agreement, ceases temporarily to be a member of the crew of a ship shall be deemed, for the purposes of this Act, to cease to belong to the ship and does not again belong to the ship until he or she again becomes a member of the crew of the ship.
- (4C) A person who, in pursuance of articles of agreement, ceases temporarily to be a member of the crew of a ship shall not be taken to have been discharged from the ship.
- (5) Unless the contrary intention appears, a reference in a provision of this Act to a prescribed country shall be read as a reference to a country prescribed for the purposes of that provision, and includes:
- (a) a colony, overseas territory or protectorate of a country so prescribed; and
 - (b) a territory for the international relations of which a country so prescribed is responsible.
- (6) Unless the contrary intention appears, a reference in this Act to the certificates of a master, officer or seaman shall be read as a reference to the certificates or other documents issued under, or having effect for the purposes of, this Act that are evidence that the master, officer or seaman, as the case may be, is a qualified master, officer or seaman, as the case may be, of any designation.
- (7) For the purposes of this Act, a port in the Great Barrier Reef Region shall be taken to be a port in Australia.
- (8) For the purposes of this Act, members of a person's family are taken to include the following (without limitation):
- (a) a de facto partner of the person;
 - (b) someone who is the child of the person, or of whom the person is the child, because of the definition of *child* in this section;
 - (c) anyone else who would be a member of the person's family because someone mentioned in paragraph (a) or (b) is taken to be a member of the person's family.

6A Answering questions

A person who, by this Act, is required to answer a question asked under or for the purposes of this Act shall be deemed not to have complied with that requirement unless he or she answers the

question truly to the best of his or her knowledge, information and belief.

6B Desertion

For the purposes of this Act, a seaman has deserted from his or her ship:

- (a) if the seaman is absent from his or her ship with the intention of not returning to the ship; or
- (b) if the seaman is absent from his or her ship for a continuous period exceeding 48 hours without leave, lawful cause or reasonable excuse.

6C Incompetency and misconduct of officers

For the purposes of this Act:

- (a) an officer is incompetent if he or she is inefficient in the performance of any of his or her duties as an officer; and
- (b) an officer is guilty of misconduct if he or she is guilty of careless navigation, drunkenness, tyranny, improper conduct or, without reasonable cause or excuse, failure of duty.

6D Taking of ships to sea

- (1) For the purposes of this Act but subject to subsection (2), a ship shall be deemed to have been taken or sent to sea, or to have gone or proceeded to sea, if the ship has been got under way for the purpose of:
 - (a) going to sea;
 - (b) plying or running; or
 - (c) proceeding on a voyage.
- (2) A ship shall not be deemed, for the purposes of this Act, to have been taken or sent to sea, or to have gone or proceeded to sea, by reason only that the ship has been got under way for the purpose of moving the ship from one berth or place in a port to another berth or place in the port.

6E Proper return port

- (1) For the purposes of this Act, but subject to subsection (2):
-

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- (a) the proper return port of a master who has been engaged for service on a ship is:
 - (i) such port as is agreed upon between the owner of the ship and the master; or
 - (ii) in the absence of agreement—the port at which the master shipped; and
 - (b) the proper return port of a seaman who has been engaged for service on a ship is:
 - (i) such port as is agreed upon between the master of the ship and the seaman, either in the seaman's agreement or otherwise; or
 - (ii) in the absence of agreement—the port at which the seaman shipped.
- (2) A master or seaman and the owner of a ship may agree to refer a question which has arisen between them as to the proper return port of the master or seaman to a proper authority for his or her decision.
- (3) Section 81 applies to and in relation to such an agreement as if it were an agreement to which that section applies and the reference in that section to a superintendent were a reference to a proper authority.

6F Authority may approve form

The Authority may, in writing, approve a form for the purposes of a provision of this Act.

7A Ships registered in Australia

A reference in this Act to a ship registered in Australia shall be read as a reference to a ship registered under the *Shipping Registration Act 1981* and as including a reference to a ship that is required to be registered under that Act but is not so registered.

8 Off-shore industry fixed structures, mobile units and vessels

- (1) In this section:

Australia includes such of the external Territories as are prescribed for the purposes of this section.

natural resources means the mineral and other non-living resources of the seabed and its subsoil.

- (2) A reference in this Act to an off-shore industry fixed structure shall be read as a reference to a structure (including a pipeline) that:
- (a) is fixed to the seabed and is not able to move or be moved as an entity from one place to another; and
 - (b) is used or intended for use in, or in any operations or activities associated with or incidental to, exploring or exploiting the natural resources of any or all of the following, namely:
 - (i) the continental shelf of Australia;
 - (ii) the seabed of the Australian coastal sea; and
 - (iii) the subsoil of that seabed.
- (3) A reference in this Act to an off-shore industry mobile unit shall be read as a reference to:
- (a) a vessel that is used or intended for use wholly or primarily in, or in any operations or activities associated with or incidental to, exploring or exploiting the natural resources of any or all of the following, namely:
 - (i) the continental shelf of Australia;
 - (ii) the seabed of the Australian coastal sea; and
 - (iii) the subsoil of that seabed;by drilling the seabed or its sub-soil, or by obtaining substantial quantities of material from the seabed or its sub-soil, with equipment that is on or forms part of the vessel;
 - (b) a structure (not being a vessel) that:
 - (i) is able to float or be floated;
 - (ii) is able to move or be moved as an entity from one place to another; and
 - (iii) is used or intended for use wholly or primarily in, or in any operations or activities associated with or incidental to, exploring or exploiting the natural resources of any or all of the following, namely:
 - (A) the continental shelf of Australia;
 - (B) the seabed of the Australian coastal sea; and
 - (C) the subsoil of that seabed;

- by drilling the seabed or its sub-soil, or by obtaining substantial quantities of material from the seabed or its sub-soil, with equipment that is on or forms part of the structure; or
- (c) a barge or like vessel fitted with living quarters for more than 12 persons and used or intended for use wholly or primarily in connection with the construction, maintenance or repair of off-shore industry fixed structures.
- (4) A reference in this Act to an off-shore industry vessel shall be read as a reference to:
- (a) a ship (not being an off-shore industry mobile unit) that is used or intended for use wholly or primarily in, or in any operations or activities associated with or incidental to, exploring or exploiting the natural resources of any or all of the following, namely:
- (i) the continental shelf of Australia;
- (ii) the seabed of the Australian coastal sea; and
- (iii) the subsoil of that seabed; or
- (b) any other ship (not being an off-shore industry mobile unit, or a ship, or a ship included in a class of ships, declared by the Minister, by instrument in writing, to be a ship or a class of ships, as the case requires, to which this paragraph does not apply) at any time when it is being so used.
- (5) A vessel or other structure that is used or intended for use in, or in any operations or activities associated with or incidental to, exploring or exploiting natural resources referred to in paragraph (3)(a) or subparagraph (3)(b)(iii) shall not be taken not to be an off-shore industry mobile unit by reason only that the vessel or other structure is also used or intended for use in, or in operations or activities associated with or incidental to, exploring or exploiting other natural resources.
- (6) A barge or like vessel that is used or intended for use in connection with the construction, maintenance or repair of off-shore industry fixed structures shall not be taken not to be an off-shore industry mobile unit by reason only that the vessel is also used or intended for use in connection with the construction, maintenance or repair of other structures.

- (7) A ship that is used or intended for use in, or in any operations or activities associated with or incidental to, exploring or exploiting natural resources referred to in paragraph (4)(a) shall not be taken not to be an off-shore industry vessel by reason only that the ship is also used or intended for use in, or in operations or activities associated with or incidental to, exploring or exploiting other natural resources.

8A Off-shore industry vessels to which Act applies

- (1) The owner of an off-shore industry vessel may apply to the Authority for a declaration under subsection (2) in relation to the off-shore industry vessel.
- (2) The Authority may, in writing, declare the off-shore industry vessel to be an off-shore industry vessel to which this Act applies.
- (2A) A declaration under subsection (2) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (3) A reference in this Act to an off-shore industry vessel to which this Act applies is a reference to an off-shore industry vessel in relation to which a declaration under subsection (2) is in force.

8AA Declaration that Act applies in relation to trading ships engaging in intra-state trade

- (1) The owner of a trading ship may apply to the Authority for a declaration under subsection (2) in relation to the ship.
- (2) The Authority may, in writing, declare that this Act applies in relation to the ship even when the ship is proceeding on a voyage other than an overseas voyage or an inter-state voyage.
- (3) The declaration has effect despite section 2.
- (4) A declaration under subsection (2) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (5) If a declaration under subsection (2) is in force in relation to a trading ship, then, for the purposes of this Act, the ship is to be taken not to be a ship referred to in subsection 2(1).

8AB Declarations that Act applies in relation to fishing fleet support vessels on inter-state or intra-state voyages

- (1) The owner of a fishing fleet support vessel may apply to the Authority for a declaration under subsection (1A) in relation to the vessel.
- (1A) Despite subsection (2), the Authority may, in writing, declare that this Act applies to the fishing fleet support vessel even when the vessel is proceeding on a voyage that is not an overseas voyage.
- (1B) A declaration under subsection (1A) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (2) If a declaration under subsection (1A) is in force in relation to a fishing fleet support vessel, the ship is taken not to be a ship referred to in paragraph 2(1)(ba).

8AC Expiration or revocation of declarations

- (1) A declaration made under section 8A, 8AA or 8AB ceases to have effect, unless sooner revoked, at the end of the period, if any, specified in the declaration.
- (2) The Authority must revoke a declaration made under section 8A, 8AA or 8AB if requested to do so by the owner of the vessel or ship to which the declaration relates.
- (3) The Authority may revoke a declaration made under section 8A, 8AA or 8AB if the Authority is satisfied:
 - (a) that the vessel or ship to which the declaration relates no longer exists or has been lost; or
 - (b) that the name or any other details of the vessel or ship have been changed since the making of the declaration; or
 - (c) that the vessel or ship no longer operates in Australia.

8B Ships imported into Australia deemed to be registered in Australia

- (1) Subject to subsection (2) and except where the contrary intention appears, the provisions of this Act apply in relation to a ship (other than an off-shore industry vessel or an off-shore industry mobile unit) not registered in Australia that has been imported into

Australia within the meaning of the *Customs Act 1901* as if it were registered in Australia and were not registered in any other country.

- (2) The Minister or the Authority may, by instrument in writing, direct that, in relation to a ship, or ships included in a class of ships, specified in the direction, subsection (1) does not have effect or does not have effect in respect of a provision or provisions of this Act specified in the direction.
- (3) A direction under subsection (2):
 - (a) is subject to such conditions (if any) as are specified in the direction; and
 - (b) may be confined to a particular period or to one or more particular voyages or operations.
- (4) If a condition that is applicable to a ship by virtue of a direction under subsection (2) is contravened, the master and the owner of the ship are each guilty of an offence punishable on conviction by a fine not exceeding \$2,000.
- (5) An offence under subsection (4) is an offence of strict liability.

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

9 Delegation

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her, delegate to a person any of his or her powers or functions under this Act, other than this power of delegation.
- (2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.
- (3) A delegation under this section does not prevent the exercise of a power or performance of a function by the Minister.

Part II—Masters and seamen

Division 1—General

9A Definitions

In this Part, unless the contrary intention appears:

ship does not include a barge, lighter or other floating vessel that is not self-propelled.

STCW Convention means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 adopted at London by the International Maritime Organization on 7 July 1978 as affected by any amendments made under Article XII of the Convention that have entered into force for Australia.

Note: The text of the Convention is set out in the Australian Treaties Series 1984, No. 7. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department's website.

10 Application of Part

Except so far as the contrary intention appears, this Part applies only to:

- (a) a ship registered in Australia;
- (b) a ship that is used to engage in coastal trading (within the meaning of the *Coastal Trading (Revitalising Australian Shipping) Act 2012*) under a general licence (within the meaning of that Act); or
- (c) a ship (other than a ship to which paragraph (a) or (b) applies) of which the majority of the crew are residents of Australia and which is operated by any of the following (whether or not in association with any other person, firm or company, being a person, firm or company of any description), namely:
 - (i) a person who is a resident of, or has his or her principal place of business in, Australia;

- (ii) a firm that has its principal place of business in Australia; or
 - (iii) a company that is incorporated, or has its principal place of business, in Australia;
- and to the owner, master and crew of such a ship.

Division 2—Superintendents

13 Superintendents

The Authority may, in writing, appoint a person to be a superintendent.

Division 2A—The manning of ships

14 Minimum complement of ships

- (1) Subject to this section, the Authority may, having regard to such principles as are prescribed for the purposes of this subsection, by order, require a ship, or each ship included in a class of ships, to carry a qualified master of a specified designation and to carry not less than:
 - (a) a specified number of qualified officers of specified designations; and
 - (b) a specified number of qualified seamen of specified designations.
- (3) The Authority is not to exercise its powers under subsection (1) except to the extent that it appears to it necessary or expedient in the interests of safety or the protection of the marine environment.
- (4) An order under subsection (1) may require a ship, or each ship included in a class of ships, to carry a master of a different designation and to carry different crews:
 - (a) for different voyages;
 - (b) for the carriage of different cargoes;
 - (c) for the performance (whether in port or at sea) of different operations done by, or in relation to, the ship; and
 - (d) according to whether the ship is in port or at sea.
- (5) Nothing in this section shall be construed as preventing more than one order under subsection (1) from applying in relation to a ship.
- (6) The Authority may, by instrument in writing, exempt a ship, or ships included in a class of ships, from the application of an order under subsection (1).
- (7) An exemption under subsection (6):
 - (a) is subject to such conditions (if any) as are specified in the exemption; and
 - (b) may be confined to a particular period or to one or more particular voyages or operations.

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- (8) If an order under subsection (1) is contravened in relation to a ship, or a condition that is applicable to a ship by virtue of an exemption under subsection (6) is contravened, the master and the owner of the ship are each guilty of an offence punishable on conviction by a fine not exceeding 60 penalty units.
- (8A) An offence under subsection (8) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (9) Where a ship does not carry a master of such designation, and such officers and seamen, as it is required to carry by virtue of an order under subsection (1) or the conditions of an exemption under subsection (6):
- (a) the Authority may cause the ship to be detained for the purpose of preventing it from going to sea; or
 - (b) the Authority may, by notice in writing addressed to the master or owner of the ship and served in accordance with the regulations, require that a specified operation by, or in relation to, the ship shall not commence or shall cease within a time specified in the notice, as the case may be.
- (10) Nothing in this section shall be construed as preventing the service under paragraph (9)(b) of more than one notice in respect of a ship.
- (11) If a notice under paragraph (9)(b) is contravened in relation to a ship, the master and owner of the ship are each guilty of a further offence punishable on conviction by a fine not exceeding \$5,000.
- (11A) An offence under subsection (11) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (13) In the preceding provisions of this section, a reference to a ship shall be read as including a reference to a ship that is intended to be constructed or is in the course of construction and, in either case, is intended to become a ship of a kind referred to in paragraph 10(a), (b) or (c).

Division 3—Qualifications of masters, officers and seamen

15 Regulations respecting qualifications and watchkeeping obligations of masters, officers and seamen

- (1) The regulations may specify standards of competence to be attained and other conditions to be satisfied, or specify conditions to be satisfied, by a person in order to be a qualified master, officer or seaman of any designation for the purposes of this Act.
- (1A) Without limiting the generality of subsection (1), regulations may give effect to the STCW Convention.
- (1B) Regulations giving effect to the STCW Convention are not intended to exclude the operation of a law of a State or of the Northern Territory that gives effect to that Convention.
- (2) Without limiting the generality of subsection (1), the conditions specified in regulations made for the purposes of that subsection may include conditions as to age, character, health, nationality, citizenship or residence, and regulations made for the purposes of that subsection may make provision for and in relation to:
 - (a) the manner in which:
 - (i) the attainment of a standard; or
 - (ii) the satisfaction of a condition;is to be evidenced, including, in particular, the obtaining of certificates and other documents to be held by masters, officers and seamen as evidence that they are qualified masters, officers or seamen of particular designations for the purposes of this Act;
 - (b) the issue, recall, surrender, replacement, form and recording of such certificates and other documents;
 - (c) the duration, variation, renewal, suspension and cancellation of such certificates and other documents;
 - (d) the instruction, training and examination of masters, officers and seamen, including the gaining of sea service and other experience, and the conduct of examinations, the conditions for admission to examinations and the appointment and remuneration of examiners;

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- (e) the recognition, for the purposes of this Act, in whole or in part and whether conditionally or unconditionally, of certificates and other documents granted or issued to or in respect of masters, officers and seamen under the laws of a State or Territory or of a country other than Australia;
 - (f) the reconsideration of decisions made under regulations made for the purposes of subsection (1);
 - (g) the exemption of persons, in whole or in part and whether conditionally or unconditionally, from any requirement in relation to which provision is made by the regulations made for the purposes of subsection (1).
- (3) In subsection (2), *decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

16 Unqualified person performing duties of master, officer or seaman

A person shall not:

- (a) falsely represent himself or herself to be a qualified master, officer or seaman of any designation;
- (b) perform duties that, under the regulations and orders, are the duties of a master, officer or seaman of a particular designation if the person is not a qualified master, officer or seaman of that designation; or
- (c) take another person into employment to perform duties that, under the regulations and orders, are the duties of a master, officer or seaman of a particular designation if the other person is not a qualified master, officer or seaman of that designation.

Penalty: 50 penalty units.

17 Certificates to be produced

- (1) A person who is serving on a ship, or is entering or has entered into an agreement to serve on a ship, as a qualified master, officer or seaman of any designation shall not fail to produce on demand his or her certificates to a proper authority.

Penalty: \$500.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

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

- (3) An offence under subsection (1) is an offence of strict liability.

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

Division 4—Supplying seamen

32 Penalty for receiving fees for supply of seamen

- (1) A person shall not demand or receive, directly or indirectly, remuneration for providing, or promising to provide, a seaman with employment on a ship (whether or not it is a ship to which this Part applies).

Penalty: \$1,000.

- (2) In this section:

seaman includes a person who is seeking employment as a seaman.

Division 7—Crew work in port

45 Employment of crew in loading and unloading

- (1) Except as prescribed, a member of the crew of a ship (whether or not it is a ship to which this Part applies) that is engaged in making overseas voyages shall not be employed at a port in Australia in handling cargo or ballast in connexion with the loading or unloading of a ship:

Provided that the regulations shall not allow the employment of the crew of such ship in handling cargo or ballast where a sufficiency of shore labour is available.

- (1A) The rates of wages to be paid in any port in Australia to shore labourers employed in handling cargo or ballast in connexion with the loading or unloading of any such ship shall be not less than the rates in any scale prescribed, under an award or agreement (if any) made or agreed to under any law of the Commonwealth or of a State or the Northern Territory, for the payment of such labour at that port.

Penalty (on master, owner, agent or charterer) for any offence against subsection (1) or (1A): \$2,000.

- (1B) If a sufficiency of shore labour cannot be obtained at such rates of wages it shall, for the purposes of this section, be deemed to be not available, and, in that case, the crew may be employed to the extent of the insufficiency.
- (2) The regulations may forbid the employment, except as prescribed, of members of the crew of a ship that is engaged in making inter-State voyages in handling cargo or ballast in connexion with the loading or unloading of ships.

Division 8—Engagement of seamen and masters etc.

Subdivision A—Work agreements

45A Work agreements

Requirement that seaman have a work agreement

- (1) A person commits an offence if:
 - (a) the person is the master or owner of a ship; and
 - (b) the master takes the ship to sea; and
 - (c) a seaman is on board the ship; and
 - (d) when the ship is taken to sea, a work agreement that complies with this section is not in force in relation to the seaman.

Penalty: 20 penalty units.

When a work agreement complies with this section

- (2) A work agreement complies with this section if the work agreement is in accordance with any regulations made for the purposes of subsection (3).

Regulations about work agreements

- (3) The regulations may prescribe matters relating to work agreements including, but not limited to, the following:
 - (a) the content and form of work agreements (including terms and conditions about the amount of wages and paid annual leave);
 - (b) the right of a seaman to review, and seek advice on, a work agreement before signing it;
 - (c) the process for signing work agreements;
 - (d) the information or documents that must be given to, or made available to, seamen in relation to work agreements and the manner in which such information or documents must be given or made available;
 - (e) the termination of work agreements.

Definitions

(4) In this section:

agreement has its ordinary meaning.

seaman includes the master of a ship.

work agreement means an agreement that is made between a seaman and the owner of a ship.

Subdivision B—Articles of agreement etc.

46 Articles of agreement

- (1) A person commits an offence if:
- (a) the person is the master or owner of a ship; and
 - (b) the master takes the ship to sea; and
 - (c) a seaman is on board the ship; and
 - (d) when the ship is taken to sea an agreement that complies with this section is not in force in relation to the seaman.

Penalty: 20 penalty units.

When an agreement complies with this section

- (2) An agreement complies with this section if:
- (a) the agreement is in accordance with any regulations made under subsection (3); and
 - (b) subsection (4) is satisfied in relation to the agreement.

Regulations

- (3) The regulations may prescribe matters relating to the content or form of an agreement.

Signing

- (4) An agreement must:
- (a) be signed first by the owner of the ship or the representative of the owner of the ship, and then by the seaman; and
 - (b) be dated:

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- (i) if the agreement is entered into when the seaman is first engaged—as at the time the agreement is signed by the owner of the ship or the representative of the owner of the ship; or
- (ii) in any other case—as at the time the agreement is signed by the seaman.

Additional provisions that may be included

- (5) An agreement may, with the approval of a proper authority, include any provisions agreed upon between the seaman and the owner of the ship or the representative of the owner of the ship, that are:
 - (a) lawful; and
 - (b) not inconsistent with the requirements of this section.

47 Persons unsuitable for engagement

- (1) The Marine Council may determine that the character of a person is such, or the conduct of a person has been such, that the person is unsuitable for engagement as a seaman.
- (2) The Marine Council shall revoke the determination if it is satisfied that the person is no longer unsuitable for engagement as a seaman.
- (3) The Marine Council shall exercise its powers under subsections (1) and (2) in accordance with such rules and principles as are prescribed.
- (4) Regulations made for the purposes of subsection (3) may prescribe that, if it is established that the character of a person is such, or the conduct of a person has been such, as is specified in the regulations, the Marine Council must determine that the person is unsuitable for engagement as a seaman.
- (5) The Marine Council shall:
 - (a) immediately give written notice of:
 - (i) the making of a determination under subsection (1); or
 - (iii) the revocation of the determination;to the person to whom the determination relates; and
 - (b) take such steps as the Marine Council considers appropriate to bring the event referred to in subparagraph (a)(i) or (iii) to

the attention of persons concerned with the engagement of seamen.

(6) Where the Marine Council makes a decision refusing to revoke a determination, the Marine Council shall give notice in writing of the decision to the person to whom the determination relates.

(7) A person who knows that a determination under subsection (1) is in force in relation to him or her shall not engage as a master or seaman or join or re-join the crew of a ship.

Penalty: \$2,000.

(8) A master, owner or agent who knows that a determination under subsection (1) is in force in relation to a person shall not take the person into employment as a master or seaman or permit the person to join or re-join the crew of a ship.

Penalty: \$2,000.

48 Report of circumstances rendering person unsuitable for engagement

Where the character of a seaman is such, or the conduct of a seaman has been such, that the seaman is, in the opinion of a master, unsuitable for engagement as a seaman, the master shall report the circumstances to a superintendent and, if practicable, immediately inform the seaman of the report.

48A Minimum age for employment at sea

(1) Except as provided by the regulations, a person shall not engage another person for service at sea in any capacity unless that other person has attained the age prescribed in respect of that capacity.

Penalty: \$1,000.

50 Period of agreements

(1) An agreement that complies with section 46 may be made for a voyage, or, if the voyages of the ship average less than 6 months in duration, may be made to extend over 2 or more voyages, and agreements so made to extend over 2 or more voyages are in this Act referred to as *running agreements*.

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- (2) A running agreement shall not extend beyond 6 months from the date thereof:
- Provided that every such agreement shall, subject to subsections (3), (4) and (5), remain in force until the ship's arrival at its port of destination, and the crew shall be considered engaged when the agreement is first signed, and discharged when the employment ends.
- (3) When a ship, the crew of which have been engaged under a running agreement which has been in force more than 6 months, reaches a port in Australia other than its port of destination, and the ship is not then proceeding, either directly or by intermediate ports, to the port of discharge mentioned in the agreement, the master may discharge any seaman, and any seaman may obtain his or her discharge.
- (4) No seaman shall be discharged, nor be entitled to be discharged, under subsection (3), unless he or she has received from, or given to, the master, on any day other than Saturday and at least 24 hours before the ship leaves the port, 24 hours' notice of the proposed or required discharge.
- (5) Any seaman discharged, or who claims his or her discharge, under subsection (3), shall be entitled to receive from the master or owner:
- (a) a free passage to the proper return port of the seaman;
 - (b) wages, at the rate provided for in his or her agreement, until he or she arrives at the proper return port;
 - (c) where a passage to the proper return port is not made available to the seaman at the time he or she is discharged and it is necessary for the seaman to obtain accommodation ashore, an allowance for victualling and accommodation at the rate of \$2 per day or at such other rate as is provided for in the seaman's agreement, whichever is the higher, for the period during which it is necessary for the seaman to reside ashore and until the passage to the proper return port is made available; and
 - (d) where the passage provided to the proper return port is otherwise than by sea, an allowance for victualling at the rate of \$1.50 per day or at such other rate as is provided for in the seaman's agreement, whichever is the higher, for the period occupied by the journey:
-

Provided that if his or her return to the proper return port is delayed by any act or default of the seaman, he or she shall not be entitled to wages or allowance for victualling and accommodation during the period of the delay.

- (6) Victualling and accommodation allowances provided for in this section may be sued for and recovered by the seaman in the same manner as wages.

52 Owner or master to furnish details of crew of ship

- (1) The owner or master of a ship to which this Part applies shall, at such times as are required by the Authority, furnish to a prescribed person such details of, and such details of changes in, the crew of the ship as are prescribed.

Penalty (on owner and master): \$1,000.

- (2) An offence under subsection (1) is an offence of strict liability.

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

53 Owner to make available information about conditions of employment

- (1) The regulations may prescribe:
- (a) information, in relation to the conditions of employment of the master and the seamen engaged on a ship, that the owner of the ship is required to make available to the master and seamen; and
 - (b) the manner and form (including electronic form) in which the prescribed information is required to be made available.
- (2) The owner of a ship commits an offence if:
- (a) the owner is subject to a requirement under regulations made for the purposes of subsection (1); and
 - (b) the owner, or a representative of the owner, engages in conduct; and
 - (c) the conduct results in a contravention of the requirement.

Penalty: 5 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

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

54 Agreements to be delivered to proper authority

The master of a ship shall, within 7 days after the discharge of the ship's crew, deliver the agreement, or a copy of it, to a proper authority.

Penalty: \$1,000.

55 Erasures and alterations

- (1) Every erasure, interlineation or alteration in the agreement, shall be wholly inoperative unless proved to have been made with the consent of all the persons interested in the erasure, interlineation, or alteration.
- (2) A certificate signed by a proper authority that an erasure, interlineation or alteration in an agreement was made with the consent of all the persons interested is, in all courts, evidence of the matter certified to.

56 Offences

Any person who:

- (a) fraudulently alters an agreement, or
- (b) makes a false entry in an agreement, or
- (c) delivers a false copy of an agreement;

shall be guilty of an offence punishable on conviction by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

57 Evidence as to agreement

A seaman may, in any proceeding, bring forward evidence to prove the contents of the agreement, or otherwise to support his or her case, without producing or giving notice to produce the agreement or a copy thereof.

59 Obligation as to seaworthiness

In every contract of service, express or implied, between:

- (a) the owner of a ship and the master; or
- (b) the owner or master and a seaman;

there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship that the owner and the master, and every agent charged with loading the ship or preparing the ship for sea or sending the ship to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when the voyage begins, and to keep the ship in seaworthy condition for the voyage during the voyage.

59A Abolition of defence of common employment

- (1) Where injury or damage is suffered by a seaman by reason of the wrongful act, neglect or default of another person engaged in common employment with the seaman, the employer is liable in damages in respect of that injury or damage in the same manner and in the same cases as if they had not been engaged in common employment.
- (2) This section applies to injury or damage arising from a wrongful act, neglect or default committed after the date of commencement of this section, whether the contract of service was made before or is made after that date.
- (2A) Notwithstanding sections 2 and 10, this section applies in relation to all ships.
- (3) In this section, *seaman* includes master.

59B Shipowner not entitled to limit liability in respect of certain claims

- (1) In this section:

Convention has the same meaning as in the *Limitation of Liability for Maritime Claims Act 1989*.
- (2) The owner of a ship is not entitled to limit his, her or its liability in respect of any claim of a kind specified in paragraph (1)(a) of Article 2 of the Convention made by:
 - (a) a servant of the owner whose duties are connected with the ship; or

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- (b) any heir or dependant of the servant or any other person who is, within the meaning of paragraph (e) of Article 3 of the Convention, a person entitled to make such a claim.

Division 9—Discharge of seamen

61 Giving of discharges to seamen

- (1) If a seaman is discharged from a ship, the master of the ship must:
 - (a) give the seaman a written discharge in the prescribed form; and
 - (b) return to the seaman any previous discharge of the seaman in the possession of the master.
- (2) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct contravenes subsection (1).

Penalty: 10 penalty units.

62A Discharge of seamen outside Australia

- (1) The master of a ship commits an offence if:
 - (a) the master discharges a seaman from the ship at a port outside Australia; and
 - (b) the master has not given the seaman at least 7 days notice of the master's intention to discharge the seaman; and
 - (c) the seaman has not consented to being discharged at the particular port (whether or not the seaman consents to the discharge).

Penalty: 10 penalty units.

- (3) If a ship is sold, transferred or otherwise disposed of while the ship is at a port in a country other than a prescribed country, the master shall, notwithstanding anything contained in the ship's agreement, discharge each seaman entered on board the ship other than a seaman who consents in writing to continue to serve on the ship.
- (4) Subsection 50(5) applies to and in relation to a seaman discharged in pursuance of subsection (3) of this section as if that seaman had been discharged in pursuance of subsection 50(3).

63 False discharges

No person shall give to any seaman a discharge which falsely indicates the capacity in which the seaman actually served or the time during which the seaman served in that capacity.

Penalty: \$2,000.

68 Offences in relation to certificates of discharge

- (1) A person shall not:
- (a) sign or give a false certificate of discharge;
 - (b) forge or fraudulently alter a certificate of discharge;
 - (c) fraudulently use, or fraudulently produce to a proper authority, a certificate of discharge that is forged, is altered or does not relate to the person; or
 - (d) allow a person to use fraudulently a certificate of discharge that does not relate to the last-mentioned person.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (2) In this section:

certificate of discharge includes a copy of such a certificate.

Division 10—Wages**70 Payment of wages—general**

- (1) The regulations may make provision for or in relation to the payment of wages to masters and seamen.
- (2) Without limiting subsection (1), the regulations may make provision for or in relation to the following:
 - (a) the frequency of making payments to masters and seamen;
 - (b) the method of making payments to masters and seamen;
 - (c) permitted deductions from payments to masters and seamen;
 - (d) pay slips, including the information relating to exchange rates that must be included in any pay slip given to a master or seaman;
 - (e) the payment of part or all of the wages of a master or a seaman, with the master's or seaman's consent, to a person other than the master or the seaman;
 - (f) the charges that may be imposed for making payments in accordance with paragraph (e).
- (3) The regulations must not provide for the quantum or amount of wages payable to masters and seamen.

75 Payment of wages on discharge

- (1) Where a seaman is discharged, the seaman shall, before or at the time of discharge, be paid the amount of wages due up to that time, less any deductions specified in the account required to be delivered under subsection 76(1).

Penalty (on the owner and master): \$1,000.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the person charged proves that the failure to pay to the seaman the amount of his or her wages in accordance with that subsection was due to the seaman's act or default, to a reasonable dispute as to liability for those wages or to any other cause not attributable to the wrongful act or default of the person charged or of any person acting on his or her behalf.

76 Account of wages on discharge

- (1) The master of a ship who discharges a seaman at any port shall deliver to the seaman at the prescribed time and in the prescribed form or in a form approved by the Authority by instrument in writing, a full and true account of the wages of the seaman and of the deductions made or to be made for any reason from those wages.

Penalty: \$1,000.

- (3) Subject to subsection (5), the master shall during the voyage enter in a book to be kept for that purpose, as they occur, the various matters in respect of which any deductions from wages are made and the amounts of the respective deductions which shall be initialed or signed by the seaman and no deduction shall be allowed unless so entered.
- (4) The Authority may disallow any such deduction.
- (5) The Authority may, by instrument in writing, direct that, subject to such conditions (if any) as are specified in the direction, subsection (3) does not apply in relation to the master of a specified ship or the master of a ship included in a specified class of ships.

81 Reference of differences to superintendent

- (1) A master or owner may agree with a seaman to refer a question which has arisen between them to a superintendent for his or her decision.
- (2) A superintendent may hear and decide a question referred to him or her under subsection (1).
- (3) An agreement referred to in subsection (1) shall, unless the contrary intention appears from the agreement, be deemed to contain a provision that the decision of the superintendent shall be final and binding on each party to the agreement and a person claiming under such a party.
- (4) A superintendent who gives a decision on a question referred to him or her under this section shall record that decision in a

document under his or her hand and that document is admissible in evidence.

85 Right to conveyance and wages in case of termination of services by wreck, foundering or loss

- (1) Where the service of a seaman belonging to a ship is terminated, before the time contemplated in the seaman's agreement, by reason of the wreck, foundering or loss of the ship, the seaman is, subject to this section, entitled to:
 - (a) conveyance, by or at the cost of the owner of the ship, to the proper return port of the seaman; and
 - (b) wages, at the rate payable on the day of the termination of the seaman's services, in respect of each day during the period commencing on the day after the day of the termination of the seaman's service to the day on which he or she reaches the port to which the seaman is so conveyed and for a period of one month after he or she reaches that port.
- (2) A seaman is not entitled to wages in respect of a day on which the seaman's conveyance is delayed by his or her own act, default or neglect.
- (3) Where:
 - (a) the period for which a seaman is entitled to wages under subsection (1) is less than 2 months; and
 - (b) the seaman is unemployed after he or she reaches the port to which he or she is conveyed under that subsection;the seaman is entitled to wages, at the rate payable on the day of the termination of his or her service, for each day on which the seaman is so unemployed, not being a day which is more than 2 months after the day on which the seaman's services were terminated.
- (4) A seaman is not entitled to wages under subsection (3):
 - (a) where the owner shows that the unemployment was not due to the wreck, foundering or loss of the ship; or
 - (b) for a day in respect of which the owner shows that the seaman was able to obtain suitable employment.

- (5) Where a seaman whose service is terminated by the wreck, foundering or loss of the ship was engaged by the run, the seaman is entitled to the wages to which he or she would have been entitled if the agreement had not been terminated until the end of the run, subject to all just deductions.

- (6) In this section:

seaman includes a person employed or engaged in any capacity on board the ship, but, in the case of a ship which is a fishing vessel, does not include a person who is entitled to be remunerated only by a share in the profits or the gross earnings of the working of the ship.

wages includes such allowances as are prescribed.

88 Compensation for premature discharge

- (1) If a seaman is discharged, otherwise than in accordance with the terms of his or her agreement or the provisions of this Act, without fault on the part of the seaman justifying that discharge, and without the seaman's consent, the seaman shall be entitled to receive from the master or owner, in addition to any wages the seaman has earned, compensation not being less than one month's wages, and may recover that compensation as if it were wages duly earned.
- (2) If the seaman is so discharged elsewhere than at the proper return port of the seaman, the provisions of subsections 50(5) and (6) shall also apply as if the seaman had been discharged in pursuance of subsection 50(3).

94 Master's remedies for wages

- (1) The master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his or her wages as a seaman has by law or custom.
- (2) The master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of disbursements or liabilities properly made or incurred by the master on account of the ship as a master has for the recovery of his or her wages.

- (3) If in any proceeding in any Court touching the claim of a master in respect of wages, or of such disbursements or liabilities as aforesaid, any right of set-off or counter-claim is set up, the Courts may enter into and adjudicate upon all questions and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and may direct payment of any balance found to be due.

Division 12—Discipline

101 Smuggling by crew

- (1) If a seaman commits any act of smuggling by which loss or damage is occasioned to the master or owner of the ship, the seaman may be ordered by any court of summary jurisdiction to pay to the master or owner a sum sufficient to recoup the loss or damage, and that sum may, without prejudice to any other remedy, be deducted from any wages due to the seaman.
- (2) Nothing in this section shall relieve any seaman from any penalty incurred on account of any act of smuggling.

104 Stowaways and distressed seamen

- (1) No person shall secrete himself or herself and go to sea in a ship (whether or not it is a ship to which this Part applies) without the consent of some person entitled to give that consent.

Penalty: \$1,000.
- (2) Every person whom the master of a ship is legally compelled to convey, and every person who goes to sea in a ship without such consent as aforesaid, shall, so long as he or she remains in the ship, be subject to the same laws and regulations for preserving discipline as if he or she were a member of the crew, and had signed the agreement.

110 Return of foreign-going seaman to ship

- (1) When a seaman belonging to a ship that is about to proceed on an overseas voyage from an Australian port is imprisoned on summary conviction for any term, and his or her ship will leave Australia before the expiration of the seaman's sentence, the Authority may, with the consent of the seaman, cause the seaman to be delivered to the master of the ship at any time within 24 hours before sailing, and the master shall keep the seaman on board under custody till the ship has left port.
- (2) All expenses incurred in connexion with such delivery and custody shall be paid by the master.

113 Questions as to deductions

Any question concerning deductions from the wages of a seaman may be determined in any proceeding lawfully instituted with respect to those wages, notwithstanding that the offence in respect of which the question arises has not been made the subject of any criminal proceeding.

Division 13—Provisions

115 Free provisions

A person commits an offence if:

- (a) the person is the owner of a ship; and
- (b) the owner, or a representative of the owner, does not provide free provisions to the seamen or the master engaged on the ship.

Penalty: 10 penalty units.

116 Bad provisions or water

- (1) If 3 or more of the crew of a ship consider that their provisions or water are of bad quality, or deficient in quantity, they may complain thereof to a superintendent, who shall examine the provisions and water or cause them to be examined.
- (2) If the Authority is satisfied, from the report of the superintendent or other official making the examination, that the provisions or water are of bad quality or deficient in quantity, it shall, by writing, require the master to provide provisions and water of good quality, or sufficient in quantity, as the case may be, and to cease to use or supply to the crew any provisions or water found to be of bad quality, and the master shall comply with the requisition.

Penalty (on master): \$2,000.

- (3) The superintendent or person making the examination shall enter the result thereof in the official log-book.
- (4) If the Authority certifies that there was no reasonable ground for the complaint, each of the complainants shall be liable to forfeit out of his or her wages a sum not exceeding one week's wages.
- (5) For the purposes of subsection (2), any requirement made by the Authority may be made by telegram signed by the Authority and addressed to the master of the ship in question.

117 Provisions adequate for voyage

The master of a ship must not undertake a voyage unless the ship is carrying:

- (a) water of suitable quality and quantity; and
 - (b) food of suitable quality, quantity, nutritive value and variety;
- having regard to the nature and duration of the voyage and the size, and cultural and religious backgrounds, of the crew.

117A Adequate food catering facilities to be provided

The owner of a ship must not allow the ship to undertake a voyage unless the ship has catering facilities that are so arranged and equipped as to enable proper meals to be served to the crew.

119 Weights and measures

In the event of any dispute as to the quantities of articles served out to the crew of a ship, the master shall cause the quantities to be weighed or measured in the presence of a witness by just and correct weights and measures.

Penalty: \$500.

120 Inspection of provisions and water

- (1) The Authority may, in any case where it thinks it necessary or desirable so to do, authorize an official to inspect the provisions and water which are on a ship at a port in Australia and are intended for the use of the crew of the ship.
- (2) If the person so inspecting finds that the provisions or water are not of good quality, the ship shall be detained until provisions or water are supplied to the satisfaction of that person.
- (3) If any provisions or water are found deficient in quality under this section, the master of the ship shall be guilty of an offence, unless it is proved to the satisfaction of the Court:
 - (a) that the finding of the inspecting official was not justified; or
 - (b) that the responsibility for the defects in the provisions or water rests upon some other person.

Penalty: \$1,000.

Part II Masters and seamen

Division 13 Provisions

Section 122

- (4) The owner of any ship, or the agent of the owner, or any other person, supplying or causing to be supplied provisions or water which are afterwards found deficient under this section shall be guilty of an offence unless it is proved to the satisfaction of the Court:
- (a) that the provisions or water were not deficient when supplied; or
 - (b) that when the provisions or water were supplied he or she did not know and had no reasonable cause to believe that they were deficient in quality, and had taken reasonable precautions to ascertain that they were not so deficient.

Penalty: \$1,000.

122 Disposal of bad provisions

All provisions examined or inspected under this Division and found to be of bad quality shall be disposed of as the Authority directs.

Division 14—Health

123 Medical Inspectors of Seamen

- (1) The Authority may appoint a person who is a duly qualified medical practitioner to be a Medical Inspector of Seamen.
- (2) Before the examination of a person by a Medical Inspector of Seamen for the purposes of this Act, the person at whose request the examination is to be made shall pay the prescribed fee.

124 Medical examination of masters and seamen

- (1) The regulations may make provision for or in relation to the medical examination of, and the issue of certificates of fitness to, masters, seamen and persons proposing to engage in employment as masters or seamen.
- (2) The regulations made by virtue of subsection (1) may include provisions prohibiting the engagement of a person as a master or seaman unless that person is the holder of a certificate issued under those regulations.

125 Medicines etc. to be carried on ships

- (1) The master of a ship shall not take the ship to sea, and the owner or agent of the ship shall not permit the ship to be taken to sea, unless the ship is provided, in accordance with the regulations, with:
 - (a) medicines, medical and surgical stores and appliances and anti-scorbutics; and
 - (b) instructions for dispensing and using medicines, medical and surgical stores and appliances.

Penalty: \$2,000.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the person charged with the offence satisfies the court in which the prosecution is brought that the failure to comply with the subsection was not due to any act or default on his or her part.

126 Inspection of medicines

- (1) The Authority may nominate any duly qualified person to inspect the medicines, medical and surgical stores, and anti-scorbutics, required by this Part to be carried.
- (2) The master, on being required by that person, shall make good any deficiency in quantity or quality of such articles.

Penalty: \$2,000 or imprisonment for 12 months, or both.

127 Owner liable for medical attendance etc.

- (1) If a seaman belonging to a ship:
 - (a) receives a hurt or injury, or contracts a disease; or
 - (b) suffers from any illness, not being an illness due to a wilful act or default, or to misbehaviour, on the part of the seaman; or
 - (ba) requires essential dental care;and the seaman is not at his or her proper return port, the expense of:
 - (c) providing the necessary surgical and medical advice and attendance, and medicine, until the seaman is cured, dies or arrives at that port;
 - (d) the maintenance of the seaman until he or she is cured, dies or arrives at that port;
 - (e) the conveyance of the seaman to that port; and
 - (f) if the seaman dies before arriving at that port—his or her burial or, if the seaman's body is conveyed to that port at the request of a member of his or her family, the conveyance of the seaman's body to that port;

shall be defrayed by the owner of the ship without deduction from the wages of the seaman.

Note: In relation to paragraph (1)(f), see also subsection 6(8).

- (2) For the purposes of subsection (1), where a seaman suffers from a venereal disease, that disease shall not be deemed to be due to a wilful act or default, or to misbehaviour, on the part of the seaman.
- (3) If:
 - (a) a seaman belonging to a ship is suffering from a disease or illness; and

- (b) the seaman is, for the purpose of preventing infection or otherwise for the convenience of the ship, temporarily removed from his or her ship;

the expense of:

- (c) the removal of the seaman from, and the seaman's return to, the ship;
- (d) providing the necessary surgical and medical advice and attendance, and medicine, while the seaman is away from the ship; and
- (e) the maintenance of the seaman while he or she is away from the ship;

shall be defrayed by the owner of the ship without deduction from the wages of the seaman.

- (5) The expense of all surgical and medical advice and attendance, and medicine, given to a seaman belonging to a ship while the seaman is on board the ship shall be defrayed by the owner of the ship without deduction from the wages of the seaman.
- (6) Any reasonable expenses incurred by the owner of a ship in respect of:
 - (a) an illness of a seaman belonging to the ship; or
 - (b) the burial of such a seaman who dies while on service;not being expenses which are required to be defrayed by the owner of the ship under the preceding provisions of this section, may be deducted from the wages of the seaman.
- (7) In this section, *seaman* includes master.

128 Recovery of expenses from owner

- (1) If:
 - (a) any of the expenses attendant on the illness, hurt, or injury of, or the provision of essential dental care to, a seaman, which are to be paid under this Act by the master or owner, are paid by any authority on behalf of the Commonwealth; or
 - (b) any other expenses in respect of the illness, hurt, or injury of, or the provision of essential dental care to, any seaman whose wages are not accounted for under this Act to that authority are so paid;

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those expenses shall be repaid to the authority by the master of the ship.

- (2) If the expenses are not so repaid, the amount thereof shall with costs be a charge upon the ship, and be recoverable:
- (a) from the master or owner of the ship for the time being; or
 - (b) where the ship has been lost—from the person who was the owner of the ship immediately prior to the time of its loss or abandonment; or
 - (c) where the ship has been transferred to some person not being a British subject or a citizen of a prescribed country—either from the owner for the time being or from the person who was the owner at the time of transfer;

as a debt to the Commonwealth, either by ordinary process of law or in the same court and manner as wages due to seamen.

(2A) A charge that arises under subsection (2) and that relates to expenses that are being recovered in the same court and manner as wages due to seamen has priority over a PPSA security interest in the ship.

(2B) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to a charge covered by subsection (2A).

Note 1: The effect of subsection (2B) is that the priority between a charge covered by subsection (2A) and a PPSA security interest is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to charges that are covered by subsection (2A) that arise after the commencement of subsection (2B) of this section (which commences at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

- (3) In any proceeding for such recovery, a certificate of the facts, signed by the said authority, together with such vouchers (if any) as the case requires, shall be sufficient proof that the expenses were duly paid by that authority.

132 Wages of seaman left on shore sick or injured

- (1) Where a seaman belonging to a ship is left on shore at his or her proper return port by reason of illness, hurt or injury, or the need for essential dental care, the seaman is, subject to this section and section 132B, entitled to receive wages, at the rate fixed by the

seaman's agreement, in respect of each day during the period commencing on the day on which the seaman was left on shore and ending:

- (a) on the day of his or her recovery; or
- (b) at the expiration of a period of 3 months after the day on which he or she was left on shore;

whichever first occurs.

- (2) Where a seaman belonging to a ship is left on shore at a port other than his or her proper return port by reason of illness, hurt or injury, or the need for essential dental care, the seaman is, subject to this section and section 132B, entitled to receive wages, at the rate fixed by the seaman's agreement, in respect of each day during the period commencing on the day on which the seaman was left on shore and ending:

- (a) in a case in which the seaman arrives at that port before his or her recovery:
 - (i) on the day of his or her recovery; or
 - (ii) at the expiration of a period of 3 months after the date of that arrival;

whichever first occurs; and

- (b) in a case in which the seaman does not arrive at that port before his or her recovery:
 - (i) when the seaman arrives at that port;
 - (ii) when the seaman rejoins the ship; or
 - (iii) when the seaman engages in other employment;
- whichever first occurs.

- (3) If, after the recovery of a seaman entitled to receive wages under subsection (2) and before the seaman arrives at that port:

- (a) he or she refuses or fails, without the approval of a proper authority to accept an offer of employment on a ship which is proceeding to that port, being employment under the terms of which:
 - (i) he or she would have been paid wages at a rate not less than the rate fixed by the agreement under which he or she served on the ship from which he or she was left on shore; and
 - (ii) he or she would have had the right to be discharged on arrival at that port; or

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- (b) the seaman refuses or fails, without reasonable excuse, to rejoin the ship from which he or she was left on shore or to accept conveyance back to that port by or at the cost of the owner of that ship;
- the seaman is not entitled to receive wages in respect of any period after that refusal or failure.
- (4) A seaman who, before his or her recovery, is fit to travel is not entitled to wages under subsection (2) in respect of a day on which the seaman's conveyance to the seaman's proper return port by or at the cost of the owner of the ship from which he or she was left on shore is delayed by an act, default or neglect on the part of the seaman.
- (4A) Where a seaman becomes entitled to receive wages under this section but dies before he or she ceases to be so entitled, the period in respect of which the seaman is entitled so to receive wages is the period commencing on the day on which he or she was left on shore and ending on the day of his or her death.
- (5) If:
- (a) a seaman who is left on shore from a ship is not paid wages to which the seaman is entitled under subsection (1) or (2); or
- (b) a seaman who is left on shore at a port other than that port, being a seaman who is entitled to be paid wages under subsection (2), is brought or taken back to that port at the direction of the owner or agent of the ship at a time before his or her recovery when the seaman is not fit to travel;
- the owner and agent of the ship are each guilty of an offence punishable on conviction by a fine not exceeding \$2,000.
- (5A) An offence under subsection (5) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (6) A seaman is entitled to wages under this section by reason of an illness, hurt or injury, or a need for essential dental care, only if the illness, hurt or injury, or need for essential dental care,:
- (a) is not due to a wilful act or default, or to misbehaviour, on the part of the seaman;
- (b) is such as to incapacitate the seaman wholly from the performance of his or her duty; and

- (d) was not knowingly concealed by the seaman from the person who employed or engaged the seaman at the time the seaman was employed or engaged.
- (6A) A seaman is not entitled to wages under this section by reason of an illness, hurt or injury, or a need for essential dental care,, occurring after the day on which this subsection commences, if the seaman is entitled to compensation under Division 3 of Part 2 of the *Seafarers Rehabilitation and Compensation Act 1992* in respect of that illness, hurt or injury, or need for essential dental care.
- (6B) A seaman can be taken, for the purposes of subsection (6A), to be entitled to compensation under Division 3 of Part 2 of the *Seafarers Rehabilitation and Compensation Act 1992* even though the seaman:
- (a) has failed to give written notice of the illness, hurt or injury, or need for essential dental care, under section 62 of that Act; or
 - (b) has failed to make a claim for compensation under section 63 of that Act.
- (6C) If:
- (a) a seaman is left on shore by reason of illness, hurt or injury, or a need for essential dental care; and
 - (b) the owner:
 - (i) considers the seaman is entitled to compensation under the *Seafarers Rehabilitation and Compensation Act 1992*; and
 - (ii) because of the operation of subsection (6A), intends not to pay wages in respect of any period during which the seaman is left on shore;
- the owner must advise the seaman, by notice in writing given to the seaman, of that intention.
- (6D) A notice given under subsection (6C) is not to be taken as a determination of liability under section 73 of the *Seafarers Rehabilitation and Compensation Act 1992*.
- (7) For the purposes of paragraph (6)(a), where a seaman suffers from a venereal disease, that disease shall not be deemed to be due to a wilful act or default, or to misbehaviour, on the part of the seaman.
- (8) In this section:
-

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agreement, in relation to the master of a ship, means the agreement made by the master to serve on the ship.

recovery, in relation to a seaman, means the recovery of the seaman as certified by a Medical Inspector of Seamen or any other duly qualified medical practitioner.

seaman includes master.

132A Security for expenses and wages of seaman left behind

- (1) A proper authority may require the owner, agent or master of a ship from which a seaman is left on shore:
 - (a) to deposit with the proper authority such sum as the proper authority considers necessary to cover the liability, or expected liability, of the owner in respect of the seaman under section 127 or section 132; or
 - (b) to give security for the payment by the owner of amounts for which the owner is, or may become, liable in respect of the seaman under either of those sections.
- (2) A person shall comply with a requirement made by a proper authority under subsection (1).

Penalty: \$1,000.

- (2A) An offence under subsection (2) is an offence of strict liability.

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

- (3) An amount deposited with a proper authority under subsection (1) may be expended by the proper authority in discharging the liabilities in respect of which it was deposited and the balance, if any, shall be paid to the person by whom it was deposited.
- (4) In this section, **seaman** includes master.

132B Seaman left on shore to furnish address and to report for medical examination

- (1) A seaman who is left on shore and is entitled to receive wages under section 132 shall inform a proper authority of his or her address and, if the seaman changes his or her address, shall inform the proper authority of his or her new address.

- (2) If, at the expiration of a period of 48 hours after being left on shore or after the change of address, as the case may be, the seaman, without reasonable excuse, fails to inform the proper authority of his or her address or new address, as the case may be, the seaman is not entitled to receive wages under section 132 in respect of any period after the expiration of the period of 48 hours and before he or she so informs the proper authority.
- (3) The owner, agent or master of a ship may, by notice in writing given to a seaman who:
- (a) has been left on shore from the ship;
 - (b) is entitled to receive wages under section 132; and
 - (c) is not an in-patient in a hospital;
- direct the seaman to submit himself or herself for medical examination to a duly qualified medical practitioner specified in the notice at or before such time as is so specified and, if the seaman, without reasonable excuse, fails to submit himself or herself for medical examination to the medical practitioner at or before that time, the seaman is not entitled to receive wages under that section in respect of any period after that time and before he or she submits himself or herself for medical examination to that medical practitioner or to such other duly qualified medical practitioner as the owner, agent or master directs.
- (4) Nothing in this section affects the entitlement of a seaman to wages under section 132 in respect of a period during which the seaman is an in-patient in a hospital.
- (5) In this section, *seaman* includes master.

133 Medical practitioners and first aid attendants

- (1) The owner or master of every:
- (a) ship proceeding on an overseas voyage; or
 - (b) other ship on a passage between 2 consecutive ports which exceeds such distance as is prescribed;
- having 100 persons or upwards on board shall cause to be carried as part of its complement, a duly qualified medical practitioner.
- (2) The owner or master of every:
- (a) ship proceeding on an overseas voyage; or

(b) other ship on a passage between 2 consecutive ports which exceeds such distance as is prescribed;
having more than 10 and less than 100 persons on board, and not carrying a duly qualified medical practitioner as part of its complement, shall cause to be carried as part of its complement a person certified to by a Medical Inspector of Seamen or a prescribed authority as qualified to render "first aid".

Penalty: \$2,000 or imprisonment for 12 months, or both.

134 Regulations to give effect to the Medical Examination (Seafarers) Convention 1946

- (1) The regulations may make provision for, or in relation to, giving effect to the Medical Examination (Seafarers) Convention 1946 adopted by the General Conference of the International Labour Organisation on 29 June 1946.
- (2) If a provision of the Convention applies only to a particular class of ships or to ships engaged on a particular class of voyages, a regulation that gives effect to that provision may be applied to ships of any other class or to ships engaged in any other class of voyages.
- (3) Section 2 does not apply to a regulation made for the purposes of this section.
- (4) Regulations and orders giving effect to the Convention do not apply to a ship referred to in paragraph 2(1)(a), (b), (c) or (d) to the extent that a law of a State or of the Northern Territory gives effect to the Convention in relation to that ship.

Division 15—Accommodation

135 Application of Division

This Division applies subject to any award in force under the *Workplace Relations Act 1996* that was made:

- (a) in relation to an industrial issue referred to in paragraph 5(3)(b) of that Act as in force immediately before the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*; or
- (b) under Division 2 of Part III of the *Conciliation and Arbitration Act 1904*.

136 Regulations relating to accommodation

- (1) The Governor-General may make regulations prescribing the accommodation to be provided for the master, officers and crew of a ship and, without limiting the generality of the foregoing, prescribing matters for or in relation to:
 - (a) the minimum amount of space to be provided for each person;
 - (b) the maximum number of persons to be accommodated in a specified part of a ship;
 - (c) the part of a ship in which the whole or a part of the accommodation is to be provided;
 - (d) the requirements to be observed in the construction, furnishing and equipment of the accommodation, including heating, lighting and ventilation;
 - (e) the maintenance and repair of the accommodation;
 - (f) the prohibition or restriction of the use of accommodation for a purpose other than that specified;
 - (g) the provision of hot and cold fresh water;
 - (h) the provision of bedding, mess utensils, towels and toilet requisites;
 - (i) the inspection of the accommodation;
 - (j) the submission of plans and specifications relating to the provision or alteration of accommodation; and

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- (k) the modification of a provision of the regulations in its application to a ship, or the exemption of a ship from the application of a provision of the regulations, where the keel of the ship was laid before the date of commencement of the provision or the ship had reached, before that date, a stage of construction specified in the regulations for the purposes of this paragraph.
- (2) The regulations may make provision in relation to giving effect to:
 - (a) the Accommodation of Crews Convention (Revised) 1949 adopted by the General Conference of the International Labour Organisation on 18 June 1949; and
 - (b) the Accommodation of Crews (Supplementary Provisions) Convention 1970 adopted by the General Conference of the International Labour Organisation on 30 October 1970.
- (3) If a provision of either Convention applies only in relation to a particular class of ships or in relation to ships engaged on a particular class of voyages, a regulation that gives effect to that provision may be applied to ships of any other class or to ships engaged in any other class of voyages.
- (4) Section 2 does not have effect in relation to a regulation made for the purposes of this section.
- (5) Regulations and orders giving effect to the Conventions do not apply in relation to a ship referred to in paragraph 2(1)(a), (b), (c) or (d) to the extent that a law of a State or of the Northern Territory gives effect to the Conventions in relation to that ship.

137 Provision of ventilation and wheel-houses

The Authority may require the owner of a ship to provide:

- (a) such ventilation of the machinery and boiler spaces of the ship as the Authority considers necessary; and
- (b) a wheel-house, or such other shelter, as the Authority considers adequate for the protection of the helmsman.

138A Ships not to go to sea without required accommodation

The owner of a ship shall not suffer the ship to go to sea unless the ship is provided with the accommodation, wheel-house or other

shelter, and ventilation, with which the ship is required, under or by virtue of this Division, to be provided.

Penalty: \$1,000.

138B Interpretation

In this Division:

accommodation includes sleeping rooms, mess rooms, duty rooms, recreation rooms, store rooms, change rooms, oilskin lockers, galleys, refrigerating chambers, sanitary and lavatory accommodation, hospital accommodation, office accommodation and catering accommodation.

Division 16—Protection of seamen

139 Facilities for making complaints etc.

- (1) If a seaman who is a member of the crew of a ship informs the master of the ship that he or she wishes to go ashore:
 - (a) for the purpose of consulting a proper authority in connexion with a matter related to his or her employment on the ship; or
 - (b) for a purpose connected with legal proceedings, or proposed legal proceedings, against the master or a member of the crew of the ship;the master of the ship shall not refuse the seaman leave to go ashore for that purpose at any reasonable time or otherwise prevent him or her from going ashore for that purpose.
- (2) A seaman shall not obtain leave to go ashore under subsection (1) by means of a false or misleading statement or pretence or for a reason which is frivolous or vexatious.

Penalty: 10 penalty units.

140 Assignment of salvage

An assignment or sale of salvage prior to the accruing thereof shall not bind a seaman, and a power of attorney or authority to receive any such salvage shall not be irrevocable.

145 Persons unlawfully boarding, or remaining on board, ships

- (1) A person, not being in the service of the Commonwealth or a State or Territory, shall not, unless authorized by law:
 - (a) go on board any ship (whether or not it is a ship to which this Part applies) which is about to arrive, is arriving or has arrived at the end of its voyage, without the permission of the master, before the seamen lawfully leave the ship at the end of their engagement, or are discharged (whichever last happens); or

- (b) remain on board a ship (whether or not it is a ship to which this Part applies) after being warned to leave by the master, by an officer of Customs or by an officer of police.

Penalty: \$1,000.

- (2) Any officer of the ship, officer of Customs or officer of police may take any offender under this section into custody, and cause him or her forthwith to be taken before a proper Court to be dealt with.

147 Exemptions from serving on jury

Masters and seamen of all ships (whether or not they are ships to which this Part applies) shall be exempt from serving as jurors, whether under the law of the Commonwealth or of a State or Territory.

148 Rescission of contract

- (1) In any proceeding before any Court affecting the relation between a seaman and the master or owner of any ship, the Court may rescind any contract in existence between the parties on such terms as the Court deems just.
- (2) This power shall be in addition to any other jurisdiction which the Court can exercise independently of this section.
- (3) Any of the parties to any such contract may institute proceedings under this section for the rescission of the contract.

148A Seaman not to be wrongfully left behind

- (1) A person shall not wrongfully force on shore and leave behind at a place in Australia a seaman belonging to a ship (whether or not it is a ship to which this Part applies) or otherwise cause such a seaman to be wrongfully left behind at such a place, either on shore or at sea.
- (2) A person shall not wrongfully force on shore and leave behind at a place outside Australia a seaman belonging to a ship, or otherwise cause such a seaman to be wrongfully left behind at such a place, either on shore or at sea.

Penalty: \$5,000 or imprisonment for 2 years, or both.

148C Wages and effects of seaman left behind

- (1) Subject to subsection (1A), if a seaman (other than a seaman discharged in accordance with this Act) is left on shore at any port, including a port outside Australia, from a ship, the master of the ship shall:
 - (a) prepare, in the prescribed form, a full and true account of the wages of the seaman, and enter in the official log-book of the ship a statement of the wages due to the seaman;
 - (b) take into his or her charge any effects of the seaman left on the ship and enter in the official log-book of the ship particulars of those effects;
 - (c) deliver the account prepared under paragraph (a) and any effects of the seaman which the master has taken into his or her charge under paragraph (b):
 - (i) to the seaman; or
 - (ii) if it is not practicable so to deliver the account and effects to the seaman—to a proper authority; and
 - (d) pay the amount of the wages due to the seaman:
 - (i) to the seaman; or
 - (ii) if it is not practicable so to pay the wages to the seaman or if a proper authority certifies in writing that he or she is of the opinion that the seaman deserted from the ship—to a proper authority.
- (1A) Subsection (1) does not apply in relation to a seaman serving under articles of agreement where the seaman is left on shore at a port in accordance with the terms of the articles of agreement.
- (2) Where the master of a ship delivers an account or effects, or pays the amount of any wages, to a proper authority under subsection (1), the master shall make an entry to that effect in the official log-book of the ship stating the reason why the account or effects were not delivered, or the amount of wages were not paid, to the seaman.
- (3) A proper authority to whom an account or effects are delivered, or an amount is paid, under subsection (1) shall transmit that account, those effects or that amount, as the case may be, to the Authority.

- (4) Upon:
- (a) the delivery by the master of a ship to a proper authority under this section of the effects of a seaman; or
 - (b) the payment by the master of a ship to a proper authority under this section of an amount of wages of a seaman;
- the owner, agent and master of the ship are each discharged from further liability in respect of the effects so delivered or the amount so paid, as the case may be.
- (5) If the master of a ship contravenes or fails to comply with a provision of this section, the owner of the ship and the master are each guilty of an offence punishable on conviction by a fine not exceeding \$1,000.
- (6) An offence under subsection (5) is an offence of strict liability.

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

148D Wages and effects to be held in trust

- (1) Where an amount of wages of a seaman is transmitted to the Authority under section 148C, the Authority shall, subject to this section, hold that amount in trust for the seaman.
- (3) Where a court has, under or in connection with this Act, imposed a pecuniary penalty on a seaman and the liability in respect of the penalty has not been otherwise discharged, the Authority may apply the whole or any part of an amount of wages of the seaman held by the Authority under this section in paying to the Commonwealth an amount not exceeding the amount of the penalty.
- (4) Where the effects of a seaman are transmitted to the Authority under section 148C, the Authority shall, subject to subsection (5) of this section, hold those effects in trust for the seaman.
- (5) The Authority may, after the expiration of one year from the time when the effects were transmitted to the Authority, and shall, not later than the expiration of 6 years from that time, cause those effects, or so much of those effects as are still held in trust by the Authority, to be sold by auction, and the Authority shall hold the proceeds of the sale in trust for the seaman.

Division 17—Property of deceased seamen

149 Interpretation

- (1) In this Division, unless the contrary intention appears:

property, in relation to a deceased seaman, means money and effects of the seaman referred to in section 150 and the wages due to the seaman at the date of his or her death, after all lawful deductions have been made from those wages, and includes money and effects of the seaman which a proper authority takes into his or her charge under section 153.

seaman includes master.

- (2) In the application of this Division in relation to the deceased master of a ship, a reference in this Division to the master of the ship shall be read as a reference to the officer having command or charge of the ship in succession to the deceased master.

150 Master to take charge of money and effects

If a seaman belonging to a ship dies, the master of the ship shall take into his or her charge any money or effects of the seaman which are on, or come on to, the ship and enter in the official log-book of the ship such particulars with respect to that money and those effects as are prescribed.

151 Death of seamen abroad

- (1) If a seaman belonging to a ship dies outside Australia or during a voyage to a port outside Australia and, after his or her death and before the ship arrives at a port in Australia, the ship is, for a period of at least 24 hours, at a port, the master of the ship shall:
- (a) inform a proper authority that the seaman has died; and
 - (b) if the proper authority so requires, furnish to the proper authority information with respect to the destination of the ship and the probable duration of the voyage of the ship.
- (2) The proper authority may, and, if the ship's agreement will terminate at a time when the ship is outside Australia, shall, require

the master to pay and deliver to the proper authority any property of the seaman in the possession of the master and, upon the master complying with that request, shall give to the master a receipt for the property.

- (3) The receipt shall be produced by the master to a superintendent within 48 hours after his or her arrival at the master's port of destination in Australia.
- (4) Where the ship proceeds at once to a port in Australia, without touching at a port elsewhere, or the proper authority does not require the payment and delivery of the property as aforesaid, the master shall, within 48 hours after his or her arrival at the master's port of destination in Australia, pay and deliver the property to a superintendent.
- (5) In all cases where a seaman dies during the progress of a voyage or engagement, the master shall give to the proper authority to whom payment and delivery is made as aforesaid such account in such form as he or she requires of the property of the deceased.
- (6) A deduction claimed by the master in the account shall not be allowed unless verified by an entry in the official log-book, and also by such other vouchers (if any) as are reasonably required by the proper authority to whom the account is given.

152 Penalty for not accounting for effects

- (1) If the master fails to comply with the provisions of this Act with respect to:
 - (a) taking charge of the property of a deceased seaman, or
 - (b) making in the official log-book the proper entries relating thereto, or
 - (c) procuring the proper attestation of those entries, or
 - (d) the payment or delivery of the property;

the master is guilty of an offence and shall be accountable for the property to the Authority, and shall pay and deliver it accordingly, and shall, in addition, for each offence be liable on conviction to a penalty not exceeding \$1,000.

- (1A) An offence under subsection (1) is an offence of strict liability.

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

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- (2) If any such property is not duly paid, delivered, or accounted for by the master, the owner of the ship shall pay, deliver, and account for it, and the property shall be recoverable from the owner accordingly; and if the owner fails to account for and pay or deliver it he or she is guilty of an offence and shall, in addition to his or her liability therefor, be liable on conviction, to a penalty not exceeding \$1,000.
- (2A) An offence under subsection (2) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) The property may be recovered in the Court and manner in which the wages of seamen may be recovered under this Act.

153 Effects of deceased seaman not left on board

If:

- (a) a person dies at a place outside Australia;
 - (b) at the time of, or within a period of 6 months before, the person's death, he or she was a seaman belonging to a ship; and
 - (c) the person left money or effects at the place at which he or she died elsewhere than on board the ship;
- a proper authority may take into his or her charge that money and those effects.

154 Recovery of wages of seaman lost with ship

- (1) Where a seaman is lost with his or her ship, the Authority may recover the wages due to the seaman from the owner of the ship in the same Court and the same manner as that in which seamen's wages are recoverable, and shall deal with those wages in the same manner as with the wages of other deceased seamen.
- (2) For the purposes of any proceedings in a court in relation to the wages of a seaman, a ship which was expected to arrive at a port at a time 6 months or more before the institution of the proceedings, but did not so arrive and has not been heard of since that time, shall be deemed to have been lost with all hands on board and the court may determine the date on which the ship shall be deemed to have been so lost.

- (3) Any official list of the crew, made out in accordance with this Act, or the certificate of a proper authority stating that certain seamen were shipped in the ship from a port outside Australia, shall, in the absence of proof to the contrary, be deemed sufficient evidence that they were on board the ship at the time of its loss.

155 Property of deceased seaman to be delivered to superintendent

Where a seaman belonging to a ship dies, the master of the ship shall:

- (a) if the ship is in a port in Australia at the time of death—within 48 hours after the death, pay and deliver to a superintendent any property of the seaman in the possession of the master; and
- (b) in any other case—within 48 hours after the arrival of the ship at a port in Australia, pay and deliver to a superintendent any property of the seaman not paid or delivered to a proper authority under subsection 151(2).

Penalty: \$1,000.

155A Transmission of money and effects to Authority

A superintendent or other proper authority to whom the property of a deceased seaman is paid or delivered under the preceding provisions of this Division, or a proper authority who, under section 153, takes into his or her charge the property of a deceased seaman, shall transmit that property to the Authority.

156 Right of Authority to dispose of effects of deceased seaman

- (1) Where any property of a deceased seaman comes into the hands of the Authority, the Authority, after deducting such sum as it thinks proper for expenses incurred in respect of that seaman or of his or her property, shall, subject to the provisions of this Act, deal with the residue as follows:
- (a) If the property exceeds in value \$2,000, it shall pay and deliver the residue to the legal personal representative of the deceased;
 - (b) If the property does not exceed in value \$2,000, it may either:
 - (i) pay or deliver the residue to any claimant who is proved to its satisfaction to have been the deceased's spouse

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or de facto partner immediately before the deceased's death, to be a child of the deceased, or to be legally entitled to the personalty of the deceased, or to be a person entitled to take out representation, although no such representation has been taken out, and shall be thereby discharged from all further liability in respect of the residue so paid or delivered; or

- (ii) require representation to be taken out, and pay and deliver the residue to the legal personal representative of the deceased;
 - (c) If the deceased was, at the time of his or her death, a subject of a country between which and Australia an international agreement exists relating to the disposal of the property of deceased seamen who are nationals of that country, and if the property does not exceed in value \$2,000, the Authority may, in terms of that agreement, pay and deliver the residue to the consul of the country of which the deceased was a subject, and the Authority shall be thereby discharged from all further liability in respect of the residue so paid or delivered.
- (2) Every person to whom any such residue is so paid or delivered shall apply it in due course of administration.
- Penalty: \$1,000.
- (3) Moneys to which subsection (1) applies that, in the opinion of the Authority, cannot for the time being be dealt with as that subsection requires, may be invested by the Authority as prescribed.

157 Wills of deceased seamen

- (1) Where a deceased seaman has left a will, the Authority may refuse to pay or deliver the residue referred to in section 156:
 - (a) if the will was made on board ship—to any person claiming under the will, unless the will is in writing, and is signed or acknowledged by the testator in the presence of, and is attested by, the master or first or only mate of the ship; and
 - (b) if the will was not made on board ship—to any person claiming under the will, and not being a relative of the testator, unless the will is in writing and is signed or acknowledged by the testator in the presence of and is

attested by 2 witnesses, one of whom is a proper authority, a justice or a minister of religion.

- (2) Where the Authority refuses under this section to pay or deliver the residue to a person claiming under a will, the residue shall be dealt with as if no will had been made.
- (3) The reference in paragraph (1)(b) to a relative of the testator includes a reference to the following (without limitation):
 - (a) a de facto partner of the testator;
 - (b) someone who is the child of the testator, or of whom the testator is the child, because of the definition of *child* in section 6;
 - (c) anyone else who would be a relative of the testator because someone mentioned in paragraph (a) or (b) is taken to be a relative of the testator.

158 Creditors' claims

- (1) A creditor shall not be entitled to claim from the Authority any property of a deceased seaman by virtue of representation obtained as creditor.
- (2) A creditor shall not be entitled to obtain payment of his or her debt out of the property, if the debt accrued more than 3 years before the death of the deceased, or if the demand is not made within 2 years after the death.
- (3) The demand shall be made by the creditor delivering to the Authority an account in writing, in a form approved by the Authority by instrument in writing, and verified by a statutory declaration.
- (4) If, before the demand is made, any claim to the property of the deceased made by any person has been allowed, the Authority shall give notice to the creditor of the allowance of the claim.
- (5) If no claim has been allowed, the creditor shall satisfy the Authority as to the justice of his or her account, and the Authority may then pay over to the creditor such sum as it allows, and the Authority shall thereby be discharged from all further liability in respect of the money so paid; but otherwise the demand shall be disallowed.

Section 158A

- (6) In any case the Authority may delay the investigation of any demand made by a creditor for the payment of his or her debt for one year from the time of the first delivery of the demand; and if in the course of that time a claim to the property of the deceased is made by any person who was the deceased's spouse or de facto partner immediately before the deceased's death, or who is the deceased's next of kin, or legatee, and allowed by the Authority under this Act, the Authority may pay and deliver it to that person.
- (7) Where the property has been paid and delivered by the Authority to any person who was the deceased's spouse or de facto partner immediately before the deceased's death, or who is the deceased's next of kin, or legatee of the deceased or as consul of the country of which the deceased was a subject, whether before or after the demand made by the creditor, the creditor shall have the same rights and remedies against that person as if he or she had received the property as the legal personal representative of the deceased.
- (8) In determining for the purposes of subsections (6) and (7) whether a person is next-of-kin of another person, the following persons are also to be taken into account:
 - (a) someone who is the child of the person, or of whom the person is the child, because of the definition of *child* in this Act;
 - (b) anyone else who would be a relative of the person because someone mentioned in paragraph (a) is taken into account.

158A Sale of effects etc. by auction

The Authority may, after the expiration of one year from the time when property not consisting of money comes into its hands under this Division and shall, not later than the expiration of 6 years from that time, cause any part of that property that has not been delivered to a person by the Authority under this Division to be sold by auction.

159 Disposal of effects when no claim

Where no claim to the property of a deceased seaman is substantiated within 6 years after the receipt of the property by the Authority, the Authority may in its absolute discretion, if any subsequent claim is made, either allow or refuse the claim, and,

subject to the allowance of any such claim, the property or the proceeds thereof shall be paid to the Commonwealth.

160 Giving false evidence in connection with deceased seamen's property

A person is guilty of an offence if:

- (a) the person gives false evidence; and
- (b) the person knows that the evidence is false; and
- (c) the person does so for the purpose of obtaining, either for himself, herself or for another person, any property of a deceased seaman.

Penalty: 20 penalty units or imprisonment for 12 months, or both.

Division 18—Relief to seamen's families

161 Relief of families by public institutions

- (1) Where, during the absence of any seaman on a voyage, the wife or husband, de facto partner, or any of the children or step-children, of the seaman becomes chargeable to or obtains relief from any public body or institution for the relief of destitute persons in Australia, that institution shall be entitled to be reimbursed, out of the wages of the seaman earned during the voyage, any sums properly expended during the seaman's absence in the maintenance of those members of the seaman's family or any of them, so that the sums do not exceed the following proportions of the seaman's wages, that is to say:
 - (a) If only one of those members is chargeable or obtains relief, one-half of the wages;
 - (b) If 2 or more of those members are chargeable or obtain relief, two-thirds of the wages.
- (2) If, during the absence of any seaman, any sums have been paid by the owner of his or her ship to or on behalf of any such member as aforesaid, under an allotment note made by the seaman in favour of the member, any claim for reimbursement shall be limited to the excess (if any) of the proportion of the wages hereinbefore mentioned over the sums so paid.

162 Reimbursement of institutions

- (1) For the purpose of obtaining reimbursement as aforesaid, the Authority may give to the owner or agent of the ship in which the seaman is serving a notice in writing stating the proportion of the seaman's wages upon which it is intended to make a claim, and requiring the owner or agent to retain that proportion in his or her hands for a period not exceeding 21 days from the time of the seaman's return to his or her port of discharge, and also requiring the owner or agent, immediately on the seaman's return, to give notice in writing thereof to the official.

- (2) The owner or agent, after receiving any such notice, shall retain the said proportion of wages, and give notice of the seaman's return accordingly, and shall likewise give to the seaman notice of the intended claim.
- (3) The institution may, upon the seaman's return, apply to a court of summary jurisdiction for an order for reimbursement; and the Court may make a summary order for the reimbursement to the whole extent claimed, or to such lesser amount as, under the circumstances, it thinks fit; and the owner or agent shall pay to the institution out of the seaman's wages the amount so ordered to be paid by way of reimbursement, and shall pay the residue of the wages to the seaman.
- (4) If no order for reimbursement is obtained within the period mentioned in the notice given to the owner or agent as aforesaid, the proportion of wages to be retained by the owner or agent shall immediately on the expiration of that period, and without deduction, be payable to the seaman.

Division 19—Relief and maintenance of distressed seamen

163 Interpretation

- (1) In this Division:

distressed seaman means a person who, being or having been a seaman, is in distress at a place outside Australia by reason of having been discharged or left behind from, or having been shipwrecked in, a ship.

seaman includes master.

- (2) A reference in this Division to the relief and maintenance of distressed seamen shall be read as including a reference to:
- (a) the conveyance of distressed seamen to their proper return ports;
 - (b) the conveyance of distressed seamen to port after shipwreck and their maintenance while being so conveyed; and
 - (c) the burial of distressed seamen who die outside Australia.

163A Regulations may make provision for relief and maintenance of distressed seamen

- (1) The regulations may make provision for and in relation to the relief and maintenance of distressed seamen.
- (2) Without in any way limiting the generality of subsection (1), the regulations made by virtue of that subsection:
 - (a) may prescribe the duties and functions of proper authorities in relation to the relief and maintenance of distressed seamen;
 - (b) may require the owner or master of a ship to provide a distressed seaman with a passage on the ship, and maintenance during the passage, in connexion with the conveyance of the seaman to his or her port;
 - (c) may prescribe the charges which the owner or master of a ship may make for providing a distressed seaman with a passage on the ship, and maintenance during the passage, in connexion with the conveyance of the seaman to his or her port; and

- (d) may provide for the recovery of expenditure incurred by or on behalf of the Commonwealth for or in connexion with the relief and maintenance of a distressed seaman and of wages, if any, due to the seaman and, in particular, may provide that expenditure so incurred, or wages so due, shall be a charge upon the ship to which the distressed seaman belonged.

Division 20—The master

164 All ships may be searched

- (1) All ships (whether or not they are ships to which this Part applies) may be searched by any officer of Customs, or by any officer of police authorized in writing by the Authority.
- (2) No master of any ship (whether or not it is a ship to which this Part applies) shall:
 - (a) refuse to permit an officer of Customs or an authorized officer of police to thoroughly search the ship; or
 - (b) fail to cause the ship to be hove to when called upon or signalled in the prescribed manner so to do, by any such officer, for the purpose of enabling the officer to board the ship; or
 - (c) engage in conduct that results in the concealment of any person on board the ship.

Penalty: \$5,000 or imprisonment for 2 years, or both.

167 Agreement to be produced

- (1) The master of a ship that arrives at a port in Australia from a place outside Australia shall, if required by a superintendent, immediately deliver to the superintendent:
 - (a) the articles of agreement of the ship; and
 - (b) the official log-book of the ship.

Penalty: \$1,000.

- (2) The superintendent shall return the documents to the master within a reasonable time before his or her departure, with a certificate endorsed on the agreement stating the times when the documents were delivered and returned.
- (3) If it appears that any breach of this Part has taken place, the superintendent shall make an endorsement to that effect on the agreement.

168 Documents to be handed over to master's successor

- (1) If during the progress of a voyage the master is removed or superseded, or for any other reason quits the ship, the master shall deliver to his or her successor the various documents in his or her custody relating to the navigation of the ship and to the crew thereof.

Penalty: \$1,000.

- (2) The master's successor shall, immediately on assuming the command of the ship, enter in the official log-book a list of the documents so delivered to him or her.

Penalty: \$1,000.

- (3) For the purposes of this section, the papers containing the information required to be on board a ship under section 192B shall be deemed to be a document relating to the navigation of the ship.

Division 21—The log

171 Official log-book

- (1) The master of a ship shall keep an official log-book in the prescribed form and shall make, or cause to be made, such entries in that log-book as are prescribed.

Penalty: 30 penalty units.

- (4) An entry required by this Act in an official log-book shall be:
- (a) made as soon as possible after the occurrence to which it relates;
 - (b) made and dated so as to show the date of the occurrence and of the entry respecting it.

Penalty: 30 penalty units.

- (5) No person shall, more than 24 hours after the arrival of a ship at its final port of discharge, make in the official log-book any entry of any occurrence which happened before its arrival.

Penalty: 5 penalty units.

- (6) The regulations may make provision for or in relation to the signing of entries in the official log-book of a ship.

- (7) An entry in the official log-book of a ship is, in all courts, admissible in evidence.

172 Offences in relation to official log-book

- (1) A person commits an offence if:
- (a) the person does an act; and
 - (b) the act results in:
 - (i) the destruction or mutilation of an official log-book or an entry in an official log-book; or
 - (ii) an entry in an official log-book being rendered illegible.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (2) A person commits an offence if:
- (a) the person makes or signs an entry in an official log-book, knowing that the entry is false or fraudulent; or
 - (b) omits to make an entry in an official log-book, knowing that the omission will result in the log-book being false or fraudulent.

Penalty: \$5,000 or imprisonment for 2 years, or both.

173 Delivery of official log-book

- (1) The master of a ship who is required by section 171 to keep an official log-book shall, on the termination of the articles of agreement of the ship, deliver the official log-book to a proper authority.

Penalty: \$1,000.

- (2) A proper authority, not being a superintendent, to whom an official log-book is delivered in pursuance of subsection (1) shall deal with that log-book in accordance with the directions, if any, of the Authority.

174 Transmission of log-book to superintendent

- (1) Where for any reason the official log-book ceases to be required in respect of a ship, the master or owner of the ship shall, if the ship is then in Australia within one month, and if it is elsewhere within 6 months, after the cessation transmit to a superintendent the official log-book made up to the time of the cessation.
- (2) If a ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, transmit to a superintendent the official log-book (if any) duly made out to the time of the loss or abandonment.

Penalty (on master or owner): \$1,000.

Part III—Foreign seamen

177 Definition of seaman

In this Part:

seaman means a seaman belonging to a ship to which Part II does not apply.

178 Apprehension of seaman

If any seaman is absent from duty without leave whilst his or her ship is within Australia, any justice upon complaint on oath may issue a warrant for the apprehension of the seaman, and thereupon may, at the request of the consul of the country to which the ship belongs, and on proof of the absence without leave, order the seaman to be conveyed on board the ship, or delivered to the master or mate of the ship, or to the owner of the ship or his or her agent, to be so conveyed:

Provided that, in the case of a seaman who is an Australian citizen, no such order shall be made without his or her consent.

180 Return to ship

- (1) The Authority may order to be put forcibly or otherwise on board his or her ship at any time:
 - (a) any seaman sentenced under this Part, or
 - (b) within 24 hours before the sailing of his or her ship, any seaman imprisoned on summary conviction for any offence (other than an offence under this Part) whose ship is about to leave Australia before the expiration of his or her sentence;and the master of the ship shall keep the seaman on board in custody until after the ship has left its final port of clearance in Australia:

Provided that, in the case of a seaman who is an Australian citizen, no such order shall be made without his or her consent.
- (2) Such order shall be a sufficient warrant to the gaoler of any prison to deliver the seaman into custody for the purpose aforesaid.

183 Proceedings at instance of consul only

No warrant shall be issued and no offence shall be punished under this Part unless either:

- (a) the action is taken at the instance of the consul of the country to which the ship belongs; or
- (b) the Authority has notified in the *Gazette* that the government of that country has, in regard to seamen belonging to ships of that country, requested that this Part may be enforced.

184 Proof of agreement

- (1) In any prosecution under this Part it shall not be necessary, for the purpose of proving the articles of agreement by which any seaman has engaged to serve on board any ship, to call any subscribing or attesting witness thereto.
- (2) A copy of any articles of agreement, certified to be true by the consul of the country to which the ship belongs, shall be admissible in evidence in proof of the existence and contents thereof.

185 Expenses to be paid by consul

All expenses incidental to the apprehension, imprisonment, and removal of any seaman, pursuant to this Part, shall be paid by the consul at whose instance the proceedings were instituted.

186 Expenses of returning foreign seamen left behind

Where:

- (a) a seaman is left behind at a port in Australia from a ship to which Part II does not apply without the consent of a consul in Australia of the country to which the ship belongs; and
- (b) the Commonwealth incurs expense in sending the seaman to a place outside Australia;

the Commonwealth may recover the amount of those expenses from the owner, agent or master of the ship in any court of competent jurisdiction as a debt due and payable by the owner, agent or master, as the case may be, to the Commonwealth.

Part IIIA—Pilotage

Division 1—General provisions applicable to pilotage

186A Application of Part

- (1) This Part applies only to pilots and pilotage in relation to ships:
 - (a) that are in, or in transit to or from, any waters of the Australian coastal sea that are specified in the regulations; or
 - (b) that are in any waters of Australia's exclusive economic zone that are specified in the regulations.
- (3) This Part applies to all ships, including ships to which Part II does not apply.
- (4) Section 2 does not have effect in relation to a provision of this Part.
- (5) This Part is not intended to affect the operation of any law of a State or Territory governing pilots or pilotage in relation to a port in the State or Territory.

186B Definitions

In this Part:

certificate includes a licence issued to a pilot under regulations made under section 186C.

licensed pilot means a person who is licensed as a pilot under this Act.

pilotage provider means a person who assigns or allocates a pilot to the transit of a ship through particular waters, irrespective of the legal relationship, contractual or otherwise, between that person and the pilot.

186C Qualifications of pilots etc.

- (1) For the purposes of this Part, the regulations may make provisions in relation to:
 - (a) standards of competence to be attained; and

- (b) other conditions to be satisfied by a person in order to be licensed as a pilot under this Act; and
 - (c) licensing of pilots.
- (2) Without limiting subsection (1), the conditions may include conditions as to age, character, health, nationality, citizenship or residence.
- (3) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision in relation to any of the following:
- (a) the manner in which the attainment of a standard or the satisfaction of a condition is to be evidenced, including the obtaining of certificates and other documents to be held by pilots as evidence that they are licensed as pilots under this Act;
 - (b) the issue, recall, surrender, replacement, form and recording of such certificates and other documents;
 - (c) the duration, variation, renewal, suspension and cancellation of such certificates and other documents;
 - (d) the instruction, training and examination of pilots, including the gaining of sea service and other experience, the conduct of examinations, the conditions for admission to examinations and the appointment and remuneration of examiners;
 - (e) the recognition, for the purposes of this Act, in whole or in part and whether conditionally or unconditionally, of certificates and other documents granted or issued to or in respect of pilots under this Act as in force before this section's commencement, or under the laws of a State or Territory;
 - (f) the reconsideration of decisions made under regulations made for the purposes of subsection (1);
 - (g) the exemption of persons, in whole or in part and whether conditionally or unconditionally, from any requirement under regulations made for the purposes of subsection (1).
- (4) In subsection (3), **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.
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186D Regulations may make other provisions relating to pilotage etc.

For the purposes of this Part, the regulations may also make provisions in relation to:

- (aa) the operations of a pilotage provider, including, but without limiting the foregoing:
 - (i) the duties of a pilotage provider and the manner of discharging those duties; and
 - (ii) the professional relationship between a pilotage provider and a licensed pilot; and
 - (iii) the making by the Authority of safety management codes for pilotage providers; and
 - (iv) the observation of such codes by a pilotage provider and by a licensed pilot under the control of a pilotage provider; and
 - (v) matters relating to pilotage safety management systems including the content and implementation of such systems; and
 - (vi) the keeping of records by a pilotage provider; and
 - (vii) training of pilots, and monitoring of their performance, by a pilotage provider; and
 - (viii) the professional liability of a pilotage provider and the limitation of that liability; and
- (a) the duties of a licensed pilot and the manner in which a licensed pilot is to discharge his or her duties; and
- (b) the professional relationship between a licensed pilot and the master or other officers of a ship, including provisions in relation to the professional liability of a licensed pilot and limitation of that liability; and
- (c) the keeping and maintaining by a licensed pilot of records relating to pilotage carried out by the pilot.

186E Unqualified person performing duties of licensed pilot

- (1) A person commits an offence if:
 - (a) the person makes a representation that the person is a licensed pilot; and
 - (b) the person is not a licensed pilot.

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if:
- (a) the person performs duties; and
 - (b) the duties are those of a licensed pilot under the regulations; and
 - (c) the person is not a licensed pilot.

Penalty: 50 penalty units.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

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

- (4) Strict liability applies to paragraph (2)(b).

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

- (5) A person commits an offence if:
- (a) the person takes a person into employment to perform duties; and
 - (b) the duties are those of a licensed pilot under the regulations; and
 - (c) the person is not a licensed pilot.

Penalty: 50 penalty units.

- (6) Strict liability applies to paragraph (5)(b).

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

186F Abuse of alcohol and other drugs

- (1) If a licensed pilot is, while on board a ship, under the influence of alcohol or any other drug (whether medicinal or otherwise) to such an extent that the person's capacity to carry out the person's duties as pilot is impaired, the person is guilty of an offence.

Penalty: Imprisonment for 12 months.

Part IIIA Pilotage

Division 1 General provisions applicable to pilotage

Section 186F

(2) If:

(a) a licensed pilot is, while on board a ship, under the influence of alcohol or any other drug (whether medicinal or otherwise) to such an extent that the person's capacity to carry out the person's duties as pilot is impaired; and

(b) the impairment causes or contributes to:

(i) the loss or destruction of, or damage to, the ship, its cargo or equipment; or

(ii) the loss or destruction of, or damage to, another ship, its cargo or equipment; or

(iii) death or injury to another person;

the person is guilty of an offence.

Penalty: Imprisonment for 2 years.

Division 2—Compulsory pilotage

186G Definitions

- (1) In this Division:

length overall, in relation to a ship, has the meaning given by subsection (2) or (3).

navigates without a licensed pilot has the meaning given by subsections (4) and (5).

regulated ship means any kind of ship:

- (a) that is 70 metres or longer in length overall; or
 - (b) that is a loaded:
 - (i) oil tanker; or
 - (ii) chemical carrier; or
 - (iii) liquefied gas carrier.
- (2) Subject to subsection (3), the length overall of a ship is 110% of the length as shown on the ship's load-line certification.
- (3) If the length overall of a ship cannot be worked out under subsection (2), the length is taken to be the distance between:
- (a) a vertical line passing through a point that is the foremost part of the stem; and
 - (b) a vertical line passing through a point that is the aftermost part of the stern.
- (4) Subject to subsection (5), a ship *navigates without a licensed pilot* if the ship does not have a licensed pilot on board to assist the master in navigating it.
- (5) If:
- (a) apart from this subsection, a ship navigates without a licensed pilot; and
 - (b) the ship is being towed by another vessel that is navigating with a licensed pilot;
- the ship under tow is to be treated as if it were navigating with a licensed pilot.

186H Regulations may provide for compulsory pilotage in certain circumstances

- (1) For the purposes of this Division, the regulations may make provision in relation to compulsory pilotage including provision specifying the waters that are compulsory pilotage areas for the purposes of this Division.
- (2) The waters that may be specified for the purposes of subsection (1) must be waters included within the waters referred to in subsection 186A(1).
- (3) This Division operates in addition to, and not in derogation from, any requirement for compulsory pilotage under the *Great Barrier Reef Marine Park Act 1975* within the compulsory pilotage area under that Act.
- (4) A person is not liable to be prosecuted under this Act and the *Great Barrier Reef Marine Park Act 1975* in respect of the same act or omission.

186I Offence to navigate without a licensed pilot

- (1) If:
 - (a) a ship is a regulated ship; and
 - (b) the ship navigates in a compulsory pilotage area; and
 - (c) the ship navigates in that area without a licensed pilot;the master and the owner of the ship each commit an offence.

Penalty: 500 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine up to 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

- (2) An offence against subsection (1) is an offence of strict liability.

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

- (3) In any proceedings for an offence against subsection (1), it is a defence if the defendant proves:
 - (a) that the ship was exempted under section 186K from the requirement to navigate with a licensed pilot in the area; and
 - (b) that the navigation complied with the terms of the exemption.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

186J Licensed pilots to issue certificates

- (1) If a licensed pilot has provided pilotage services for a regulated ship in a compulsory pilotage area, the licensed pilot must give the master of the ship a certificate in a form approved by the Authority.
- (2) The licensed pilot must provide the certificate to the master before disembarking from the ship after the navigation in the area.
- (3) The certificate must:
 - (a) identify the ship; and
 - (b) identify the area; and
 - (c) state that the licensed pilot has provided pilotage services for the ship in the area; and
 - (d) provide any other information specified by the Authority in the approval of the form of the certificate.

186K Exemption from requirement to navigate with a licensed pilot

- (1) The master or owner of a regulated ship may apply to the Authority for an exemption from the requirement to navigate with a licensed pilot in a compulsory pilotage area.
- (2) The application must:
 - (a) be in writing; and
 - (b) contain the prescribed information; and
 - (c) be made in a form approved by the Authority.
- (3) The Authority must, after consideration of the application:
 - (a) by instrument in writing, grant or refuse to grant the exemption applied for; and
 - (b) give the applicant a copy of the instrument, and, in the case of a refusal, a statement of the reasons for that refusal.
- (4) A refusal to grant the exemption applied for may be a refusal to grant the exemption at all or a refusal to grant the exemption as to a part of the ship's proposed navigation in the compulsory pilotage area.

Section 186L

- (5) If the Authority grants an exemption, whether it is the exemption applied for or a lesser exemption, the exemption may be expressed to be subject to such conditions as are specified by the Authority in the instrument granting the exemption.
- (6) If:
- (a) a regulated ship is navigating in a compulsory pilotage area; and
 - (b) the Authority has granted an exemption in respect of the proposed navigation by the ship in that area; and
 - (c) that exemption is subject to conditions; and
 - (d) the ship, in navigating in that area, fails to comply with those conditions;
- the master and the owner of the ship each commit an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (7) An offence against subsection (6) is an offence of strict liability.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (8) An instrument under this section granting or refusing an exemption is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

186L Defence in proceedings for offences

- (1) In any proceedings for an offence against subsection 186I(1) or 186K(6), it is a defence if the master or owner (as the case may be) proves that the regulated ship navigated in a compulsory pilotage area because of stress of weather, saving life at sea or other unavoidable cause.
- (2) In any proceedings against the owner of a ship for an offence against subsection 186I(1) or 186K(6), it is a defence if the owner proves that the owner took all reasonable precautions and exercised due diligence to ensure that the ship would not navigate in a compulsory pilotage area in contravention of that subsection.

Note: The defendant bears a legal burden in relation to the matter in subsection (1) or (2). See section 13.4 of the *Criminal Code*.

Part IV—Ships and shipping

Division 1—General

187 Application of Part

- (1) This Part shall, except where otherwise expressed, apply to all ships, including ships to which Part II does not apply.
- (2) Section 2 does not have effect in relation to a provision of this Part that gives effect to a provision of Chapter V of the Regulations contained in the Annex to the Safety Convention (other than Regulation 7 or 14 of that Chapter of those Regulations).
- (3) Provisions of this Act giving effect to the Safety Convention do not apply in relation to a ship referred to in paragraph 2(1)(a), (b), (ba), (c) or (d) to the extent that a law of a State or of the Northern Territory makes provision giving effect to the Safety Convention in relation to that ship.

187AA Issue of certificates in respect of ships to which this Act does not apply

- (1) In this section, *prescribed certificate* means:
 - (a) a certificate referred to in section 194, 206D, 206E, 206F, 206G, 206H, 206J, 206K, 222, 223 or 405F; or
 - (b) a certificate prescribed for the purposes of this section.
- (2) The owner of a ship referred to in paragraph 2(1)(a), (b), (ba), (c) or (d) may apply, in the prescribed form or in a form approved by the Authority by instrument in writing, to the Authority for the issue of a prescribed certificate in respect of the ship.
- (3) Where an application is made under subsection (2) for the issue of a prescribed certificate in respect of a ship, section 2 does not have effect to the extent necessary to enable the application to be dealt with in accordance with this Act and to enable the prescribed certificate to be issued in respect of the ship.

- (4) Where a prescribed certificate is issued in respect of a ship by virtue of this section, section 2 does not have effect to the extent necessary to enable the provisions of this Act relating to such a prescribed certificate to apply in relation to the certificate so issued.

187A Interpretation

- (1) In this Part, unless the contrary intention appears:

cargo ship means a ship other than a passenger ship.

cargo ship safety certificate means a certificate issued under section 206GA.

cargo ship safety construction certificate means a certificate issued under section 206E.

cargo ship safety equipment certificate means a certificate issued under section 206F.

cargo ship safety radio certificate means a cargo ship safety radio certificate issued under section 206G.

cargo steamship means a steamship other than a passenger steamship.

certificate of equipment means:

- (a) a certificate of equipment issued under subsection 194(4) or (5A); or
- (b) a certificate, or a certificate in a class of certificates, recognised in a determination made under subsection 194(6) as equivalent to a certificate of equipment, or a class of certificates of equipment, issued under subsection 194(4).

certificate of survey means:

- (a) a certificate of survey issued under subsection 194(4) or (5A); or
- (b) a certificate, or a certificate in a class of certificates, recognised in a determination made under subsection 194(6) as equivalent to a certificate of survey, or a class of certificates of survey, issued under subsection 194(4).

classification certificate means a classification certificate issued by a survey authority and of a standard approved by the Authority under section 187BA.

country to which the Safety Convention applies means a country specified in a notice under section 187B.

declaration of survey means a declaration made under this Act by a surveyor with respect to the survey of a ship.

exemption certificate means a certificate issued under subsection 206H(1).

International Code of Signals means the Code of that name that is issued by the International Maritime Organization, as amended from time to time.

international voyage means:

- (a) for the purposes of Division 5, a voyage:
 - (i) from a port in Australia to a port outside Australia;
 - (ii) to a port in Australia from a port outside Australia;
 - (iii) from a port in a country that is a Load Line Convention country for the purposes of that Division to a port outside that country; or
 - (iv) to a port in a country that is a Load Line Convention country for the purposes of that Division from a port outside that country; and
- (b) for the purposes of the provisions of this Part other than Division 5, a voyage:
 - (i) from a port in Australia to a port outside Australia;
 - (ii) to a port in Australia from a port outside Australia;
 - (iii) from a port in a country to which the Safety Convention applies to a port outside that country; or
 - (iv) to a port in a country to which the Safety Convention applies from a port outside that country;other than a voyage in the course of which the ship concerned:
 - (v) is not at any time more than 600 nautical miles from the nearest point on the coast of Australia; and
 - (vi) does not call at a port in a country other than Australia.

nuclear cargo ship safety certificate means a certificate issued under section 206K.

nuclear passenger ship safety certificate means a certificate issued under section 206J.

passenger certificate means a passenger certificate issued under subsection 194(4) or (5A).

passenger ship means a ship carrying more than 12 passengers.

passenger ship safety certificate means a certificate issued under subsection 206D(1) or (3).

passenger ship short voyage safety certificate means a certificate issued under subsection 206D(2) or (4).

passenger steamship means a steamship carrying more than 12 passengers.

radio installation means a radiotelegraphy or radiotelephony installation, but does not include a radio navigational aid.

Safety Convention certificate means a certificate issued in respect of a steamship, not being a ship registered in Australia, by or with the authority of the government of a country to which the Safety Convention applies in accordance with the Safety Convention or a law of that country that gives effect to the Safety Convention.

Safety Convention ship means a ship that is of a kind to which the Safety Convention applies and is entitled to fly the flag of a country to which the Safety Convention applies.

short international voyage means an international voyage:

- (a) in the course of which a ship is not any time more than 200 nautical miles from a port or place in which the passengers and crew could be placed in safety; and
- (b) which does not exceed 600 nautical miles in length between the last port of call in the country in which the voyage begins and the final port of destination.

subdivision load line means a load line indicating the depth to which a passenger steamship may be loaded having regard to the extent to which it is subdivided and to the space for the time being allotted to passengers.

the Container Convention means the International Convention for Safe Containers as corrected by the Procès-Verbal of Rectification dated 25 June 1976 (a copy of the English text of the articles of which, and of the annexes to which, as so corrected, is set forth in Schedule 5), as affected by:

- (a) any amendment of the Convention, other than an amendment not accepted by Australia, made under Article IX of the Convention; and
- (b) the amendments to Annex 1 dated 2 April 1981 (a copy of the English text of which is set forth in Schedule 5A) and any other amendment of the annexes to the Convention, other than an amendment objected to by Australia, made under Article X of the Convention.

the Load Line Convention means the International Convention on Load Lines, 1966, as corrected by the Procès-Verbal of Rectification dated 30 January 1969 and the Procès-Verbal of Rectification dated 5 May 1969 (a copy of the English text of the articles of which, and of the annexes to which, as so corrected, other than the chart attached to Annex II, is set forth in Schedule 4):

- (a) as affected, after the date on which the Protocol of 1988 relating to the Load Line Convention enters into force for Australia, by that Protocol; and
- (b) as also affected by any amendment, other than an amendment not accepted by Australia, made under section 29 of the Convention.

the Prevention of Collisions Convention means the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (a copy of the English text of the articles of which is set forth in Schedule 3), together with the International Regulations for Preventing Collisions at Sea, 1972, constituted by the rules and other annexes attached to that Convention, as corrected by the Procès-Verbal of Rectification dated 1 December 1973 (a copy of the English text of which rules and other annexes, as so corrected, is also set forth in Schedule 3), as affected by any amendment, other than an amendment objected to by Australia, made under Article VI of that Convention.

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

the Safety Convention means the International Convention for the Safety of Life at Sea, 1974 (a copy of the English text of the articles of which, and of the annex and appendix to which, is set forth in Schedule 1):

- (a) as affected, after the respective dates on which:
 - (i) the Protocol of 1978 relating to the Safety Convention; and
 - (ii) the Protocol of 1988 relating to the Safety Convention; enter into force for Australia—by each of those Protocols; and
- (b) as also affected by any amendment, other than an amendment objected to by Australia, made under Article VIII of that Convention.

valid Safety Convention certificate means a Safety Convention certificate which complies with such requirements as are prescribed.

- (2) For the purposes of determining for the purposes of this Part whether a voyage is an international voyage, account shall not be taken of a deviation by a ship from an intended voyage if the deviation is due only to stress of weather or any other circumstance that neither the master nor the owner of the ship could have prevented or forestalled.
- (3) For the purposes of determining for the purposes of Division 5 whether a voyage is an international voyage, a territory for which the United Nations are the administering authority, or for the international relations of which Australia or any other country is responsible, shall be deemed to be a separate country.
- (4) Where an international voyage:
 - (a) is such that, in the course of the voyage, a ship is not at any time more than 200 nautical miles from a port or place in which the passengers and crew could be placed in safety; and
 - (b) exceeds 600 nautical miles, but does not exceed 1,200 nautical miles, in length between the last port of call in the country in which the voyage begins and the final port of destination;

the Authority may, by instrument in writing, direct that, subject to such conditions as are specified in the direction, the voyage shall,

for the purposes of this Act, be treated as if it were a short international voyage in relation to any ship:

- (c) that is, or is included in a class of ships that is, specified in the direction; and
 - (d) in respect of which a passenger ship short voyage safety certificate is in force.
- (5) For the purposes of this Part, an unregistered ship entitled to fly the flag of a country shall be deemed to be registered in that country.

187B Declaration of countries to which the Safety Convention applies

The Authority may, by notice published in the *Gazette*, declare that, for the purposes of this Part, a country, other than Australia, specified in the notice is a country to which the Safety Convention applies.

187BA Approval of classification certificates

The Authority may, for the purposes of this Part, approve, in writing, a standard of classification certificate issued by a survey authority.

187C When ships deemed to be overloaded

- (1) Where a ship is so loaded at any time that, if the ship were floating without a list in still salt water of a specific gravity of 1.025, the load line marked on either side of the ship that is the appropriate load line at that time would be submerged, the ship shall, for the purposes of this Part, be deemed to be overloaded, and, subject to subsection (4), to be overloaded to the extent to which that load line would be so submerged.
- (2) Where:
- (a) a ship is at any time engaged on, or is about to engage on, a voyage during which, in the ordinary course, a load line marked on either side of the ship (not being a load line that is the appropriate load line at that time) would, at some later time during the voyage, become the appropriate load line; and

Section 187D

- (b) the ship is so loaded at that first-mentioned time that, if the ship were floating without a list in still salt water of a specific gravity of 1.025 and there were unloaded from the ship the fuel and other material that would, in the ordinary course, be consumed or discharged before that later time, that load line would be submerged;
- the ship shall, for the purposes of this Part, be deemed to be overloaded and, subject to subsection (4), to be overloaded to the extent to which that load line would be so submerged.
- (3) Where a passenger ship is so loaded at any time that, if the ship were floating without a list in still salt water of a specific gravity of 1.025, the subdivision load line marked on either side of the ship that is the appropriate subdivision load line at that time would be submerged, the ship shall, for the purposes of this Part, be deemed to be overloaded, and subject to subsection (4), to be overloaded to the extent to which that subdivision load line would be so submerged.
- (4) Where:
- (a) in any proceedings under this Act, it is proved that a ship is, by force of more than one subsection of this section, deemed to be overloaded; and
- (b) the extent to which, under those subsections, the ship is deemed to be overloaded is not the same in each case;
- the ship shall, for the purposes of this Part, be deemed to be overloaded to the greatest extent to which it is deemed to be overloaded under those subsections.
- (5) For the purposes of this section, the load line or subdivision load line marked on a ship that is the appropriate load line or subdivision load line at any time shall be determined in accordance with the regulations and orders.

187D Certificate by Minister as to amendments of the Load Line Convention

The Minister may, by writing under his or her hand, certify that the amendments, other than amendments not accepted by Australia, by which the Load Line Convention was affected as at such date as is specified in the certificate are set out in, or annexed to, the

certificate, and such a certificate is, for all purposes, *prima facie* evidence of the matters so certified.

187E Certificate by Minister as to amendments of the Safety Convention etc.

The Minister may, by writing under his or her hand, certify that the amendments, other than amendments objected to by Australia, by which the Safety Convention was affected as at such date as is specified in the certificate are set out in, or annexed to, the certificate, and such a certificate is, for all purposes, *prima facie* evidence of the matters so certified.

188 Exemptions

- (1) Where a ship (other than a nuclear ship) that is not ordinarily engaged on international voyages undertakes, in exceptional circumstances, a single international voyage, the Authority may, if it is satisfied that the ship complies with safety requirements that, in its opinion, are adequate for the voyage, exempt the ship or any person, in respect of that voyage, from compliance with any provision of this Act or the regulations or orders that gives effect to the Safety Convention.
- (2) The Authority may, in relation to a Safety Convention ship that is registered in Australia, exercise the right conferred on the Government of the Commonwealth by paragraph (b) of Regulation 4 of Chapter I contained in the Annex to the Safety Convention to exempt the ship from a provision of Chapter II-1, II-2, III or IV of the Regulations contained in that Annex, and a ship so exempted, and the master and owner of the ship, are exempt from compliance with any provision of this Act that gives effect to that provision.
- (3) An exemption under subsection (2) is subject to such safety requirements (if any) as are specified in the exemption.
- (4) If a safety requirement that is applicable to a ship by virtue of an exemption under subsection (3) is contravened, the master and the owner of the ship are each guilty of an offence punishable on conviction by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 4 years, or both.
- (5) An offence under subsection (4) is an offence of strict liability.

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

189 All ships liable to survey and inspection

All ships shall be liable to inspection and survey.

190 Appointment of surveyors

The Authority may appoint a person who is skilled with regard to:

- (a) wooden hulls and equipment, other than radio equipment; or
 - (b) metal hulls and equipment, other than radio equipment; or
 - (c) engines, boilers and machinery; or
 - (d) radio installations; or
 - (e) radio navigational aids; or
 - (f) assessing the working and living conditions on board ships;
- to be a surveyor.

190AA Powers of inspection of surveyors

- (1) A surveyor may at any reasonable time go on board a ship and inspect the ship and any part of the ship, including the hull, boilers, machinery and equipment of the ship, and may require the certificates of the master or of any officer of the ship, or any certificate or other document relating to the ship, to be produced to him or her.
- (2) The powers of a surveyor under subsection (1) extend, subject to section 227E, to the inspection of a ship for the purpose of ascertaining whether the ship complies with such of the provisions of this Act and the regulations and orders relating to load lines as apply to the ship and whether the ship is overloaded, and to requiring the production to him or her of any certificate relating to load lines issued in respect of the ship.
- (2AA) The powers of a surveyor under subsection (1) extend to:
 - (a) the inspection of a ship for the purpose of ascertaining whether the ship complies with such of the provisions of:
 - (i) this Act, the regulations and orders; and
 - (ii) Part VA of the *Shipping Registration Act 1981*;

relating to the working and living conditions of the seamen on board the ship and of the master of the ship as apply to the ship; and

(b) requiring the production to the surveyor of any document relating to those conditions.

(2AB) The powers of a surveyor under subsection (1) extend to:

(a) the inspection of a ship for the purpose of ascertaining whether the ship complies with section 33A of the *Shipping Registration Act 1981* (which is about registration conditions for certain ships); and

(b) requiring the production to the surveyor of any document relating to compliance with that section.

(2AC) Subsections (2), (2AA) and (2AB) do not limit subsection (1).

(2A) A person who fails to comply with any requirement made by a surveyor under subsection (1), (2), (2AA) or (2AB) commits an offence punishable on conviction by a fine not exceeding 60 penalty units.

(2B) An offence against subsection (2A) is an offence of strict liability.

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

(3) Where the Authority receives the report of a surveyor who has carried out, or proposes to carry out, an inspection of a ship under this section, it may, if it considers it necessary so to do, require the ship to be taken into dock or otherwise dealt with so that a surveyor can inspect the hull, boilers, machinery or equipment of the ship.

(4) If:

(a) the Authority requires a ship to be taken into dock or otherwise dealt with under subsection (3); and

(b) the person to whom the requirement was given does not comply with that requirement;

the person commits an offence punishable on conviction by imprisonment for a period not exceeding 2 years.

(5) Subsection (2A) or (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

190AB Publication of information about ships

- (1) The Authority may publish, in the manner prescribed, such information derived about a ship:
 - (a) during an inspection or survey of that ship under section 190AA; or
 - (b) during an inspection or survey of that ship conducted otherwise than under this Act; or
 - (c) otherwise than by an inspection or survey; as is prescribed.
- (2) The regulations may make provision for:
 - (a) the manner in which information derived:
 - (i) during an inspection or survey; or
 - (ii) otherwise than by inspection or survey; will be published; and
 - (b) the nature of the information that will be published; and
 - (c) the time at which the publication of information will occur.

190A Alterations etc. of ships and cancellation of certificates

- (1) If:
 - (a) a certificate has been issued under Division 2 or Division 2B in respect of a ship; and
 - (b) the ship's hull, equipment or machinery, or part of the ship's hull, equipment or machinery:
 - (i) is altered, replaced or damaged so that the ship's seaworthiness or efficiency is affected; or
 - (ii) becomes inefficient for some other reason;written notice of the alteration, replacement, damage or inefficiency must forthwith be given to the person prescribed in the form prescribed.
 - (1A) If:
 - (a) a notice is required to be given under subsection (1); and
 - (b) such notice is not given;the master and the owner of the ship are each guilty of an offence in respect of each day during which the notice is not given (including the day on which the person is convicted under this subsection or any subsequent day).
-

Penalty: \$1,000.

(1B) An offence under subsection (1A) is an offence of strict liability.

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

(2) Where the Authority has reason to believe that:

- (a) the report of a surveyor in respect of a ship was fraudulently or erroneously made or obtained;
- (b) a certificate has been issued under Division 2 or Division 2B in respect of a ship upon false or erroneous information;
- (c) since the last declaration of survey was made in respect of a ship, the hull, equipment or machinery, or a part of the hull, equipment or machinery, of the ship has been altered, replaced or damaged in a manner which affects the ship's efficiency or seaworthiness or has become otherwise inefficient; or
- (d) the owner of a ship has failed to comply with section 193 in respect of the ship;

it may cancel any certificate issued in respect of the ship under Division 2 or Division 2B or detain the ship until it is satisfied that the ship can proceed to sea without danger to its crew or passengers.

(3) Where the Authority cancels a certificate issued in respect of a ship under Division 2 or Division 2B, the certificate is of no force or effect after the Authority has given notice in writing of the cancellation to the owner, agent or master of the ship.

(4) Where a certificate issued in respect of a ship under Division 2 or Division 2B has expired or been cancelled, the Authority may require the owner or master of the ship to deliver up the certificate to the Authority or to such other person as the Authority directs, and the Authority may detain the ship until the requirement is complied with.

190B Regulations relating to construction, surveys etc.

(1) The regulations may:

- (a) specify requirements with which the construction, hull, equipment and machinery of ships shall comply; and
- (b) make provision for or in relation to the survey and inspection of ships.

- (2) Without limiting the generality of subsection (1), the regulations that may be made by virtue of that subsection include regulations for or in relation to:
 - (a) the assigning of subdivision load lines to, and the marking of subdivision load lines on, ships;
 - (b) the furnishing of reports and declarations of survey, and the issuing of certificates, under this Part; and
 - (c) the exempting of ships, other than nuclear ships, from any requirement of this Act that relates to the construction, hull, equipment or machinery of ships.

191 Regulations to give effect to Safety Convention

- (1) The regulations may make provision for or in relation to giving effect to the Safety Convention.
- (2) Where a provision of the convention applies only in relation to a particular class of ships or in relation to ships engaged on a particular class of voyages, any regulation that gives effect to that provision may be applied to ships of any other class or to ships engaged in any other class of voyages.
- (3) Section 2 does not have effect in relation to a regulation, or an order made in pursuance of the regulations, that gives effect to a provision of Chapter V of the Regulations contained in the Annex to the Convention (other than Regulation 7 or 14 of that Chapter of those Regulations).
- (4) Regulations and orders giving effect to the Convention do not apply in relation to a ship referred to in paragraph 2(1)(a), (b), (ba), (c) or (d) to the extent that a law of a State or of the Northern Territory makes provision giving effect to the Convention in relation to that ship.

191A Discretions relating to regulations giving effect to Conventions

- (1) Where, under this Act, the Governor-General is empowered to make regulations for the purpose of implementing or giving effect to any of the provisions of the Container Convention, the Safety Convention, the Prevention of Collisions Convention, the Prevention of Pollution from Ships Convention or the Load Line Convention, the requirement shall, in the case of a provision the terms of which are such as to vest in the several Governments who

are parties to the Convention a discretion as to whether any, and if so what, action should be taken thereunder, be construed as an authority to the Governor-General to make by regulation such provision (if any) with respect to the matter in question as the Governor-General in the exercise of that discretion thinks proper.

- (2) Notwithstanding any regulation made under any provision of this Act for the purpose of giving effect to, or implementing, any provision of the Safety Convention, the Prevention of Collisions Convention, the Prevention of Pollution from Ships Convention or the Load Line Convention which requires a particular fitting, material, appliance or apparatus, or type thereof, to be fitted or carried in a ship, or any particular provision to be made in a ship, the Authority may allow any other fitting, material, appliance or apparatus, or type thereof, to be fitted or carried, or any other provision to be made if it is satisfied that that other fitting, material, appliance or apparatus, or type thereof, or provision, is at least as effective as that required by the Convention.

191B Offences with respect to subdivision load line marks

- (1) If a ship (other than a Safety Convention ship):
- (a) has been marked in accordance with the regulations or orders with subdivision load lines; and
 - (b) the ship is not kept so marked;
- the owner and the master of the ship are each guilty of an offence in respect of each day during which the ship is not kept so marked (including the day on which the person is convicted under this subsection, or any subsequent day).

Penalty: \$2,000.

- (1A) Subsection (1) does not apply if the owner or master has reasonable cause.

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

- (1B) An offence under subsection (1) is an offence of strict liability.

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

- (2) A person commits an offence if:

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- (a) a ship other than a Safety Convention ship has been marked with a subdivision load line mark; and
- (b) the person engages in conduct; and
- (c) the person's conduct results in the concealment, removal, alteration, defacing or obliteration of any such mark.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (3) Subsection (2) does not apply if the person has reasonable cause.

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

192A Detention of ships not registered in Australia

- (1) Where, under this Part, a ship to which Part II does not apply is detained or proceedings are taken against the owner or master of such a ship, the Authority shall forthwith give notice in writing, specifying the grounds on which the ship has been detained or the proceedings have been taken, to the consul for, or to another representative of, the country in which the ship is registered at or nearest to the port where, for the time being, the ship is.
- (2) Where notice of the detention of a ship is given to a consul or other representative under subsection (1), a person named by the consul or other representative may accompany any person directed to survey the ship while he or she is carrying out the survey.

192B Stability information

The regulations may make provision for or in relation to the carrying on a ship of information with respect to the stability of the ship and, without limiting the generality of the foregoing, regulations so made may specify the tests or other data on which such information is to be based.

192C Nuclear ships

- (1) The regulations may make provision for ensuring that nuclear ships do not cause unreasonable radiation or other nuclear hazards to the crews or passengers of such ships, or to other persons, or to any waterways or food or water resources.

- (2) Without limiting the generality of subsection (1), the regulations that may be made by virtue of that subsection include regulations:
- (a) making provision for or in relation to the preparation and the maintaining, in respect of a nuclear ship registered in Australia, of a Safety Assessment, that is to say, a document setting out prescribed information with respect to the ship and its power plant to enable an assessment to be made from time to time of the safety of the ship and of its power plant for the purpose of ensuring that there is no unreasonable radiation or other hazard to the crew or passengers of the ship or to other persons, or to waterways or food or water resources;
 - (b) making provision for or in relation to the preparation and the maintaining, in respect of a nuclear ship registered in Australia, of an Operating Manual, that is to say, a document setting out prescribed information with respect to the operation of the power plant of the ship;
 - (c) specifying requirements to be complied with in relation to a nuclear ship before it enters a port in Australia, including the giving of notice that the ship proposes to enter the port, the furnishing of prescribed information and the production of the Safety Assessment of the ship, or of a document that is issued by the government of another country in respect of the ship and corresponds with a Safety Assessment; and
 - (d) requiring the giving of notice by the master of a nuclear ship of any accident causing, or likely to cause, the existence of a hazard on, or in the vicinity of, the ship.
- (3) The owner or master of a nuclear ship shall not permit the ship to enter Australia unless a person authorized by the Authority for the purposes of this subsection has informed the owner or master of the ship that he or she is satisfied as to the safety of the ship with respect to radiation and other nuclear hazards.
- (4) A person who contravenes subsection (3) or a provision of the regulations made by virtue of this section is guilty of an offence punishable on conviction by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 4 years, or both.

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193 Steamships to be surveyed periodically

- (1) Subject to this Part, the owner of a steamship shall cause a part of the steamship that, under the regulations or orders, is subject to survey to be surveyed at least once during each prescribed period.

Penalty: \$2,000.

- (2) For the purposes of subsection (1), *prescribed period*, in relation to a part of a steamship, means:
 - (a) a period of 12 months; or
 - (b) such longer period as, under the regulations or orders, is applicable to that part of the steamship.
- (3) The regulations may make provision for exempting, in whole or in part, from subsection (1) a steamship in respect of which there is in force a certificate under this Division or under Division 2B, a valid Safety Convention certificate or a classification certificate.

194 Surveyors' reports and declarations, and issue of certificates

- (1) When a surveyor has made a survey of a steamship, in whole or in part, he or she shall furnish a report on the survey to the Authority.
- (2) If the surveyor is satisfied that it is proper for him or her so to do, the surveyor shall furnish to the Authority a declaration in the prescribed form in respect of the survey.
- (3) The surveyor shall state in the declaration:
 - (a) the voyages or class of voyages on which, in the opinion of the surveyor, having regard to the construction, equipment and machinery of the ship, so far as surveyed by him or her, the ship is fit to ply; and
 - (b) in the case of a passenger steamship which, in the opinion of the surveyor, is, so far as surveyed by him or her, fit to ply on international voyages while engaged in a special trade only, that the ship is so fit only while so engaged.
- (4) The Authority may, after taking into account any report or reports furnished to it in respect of the ship by a surveyor or surveyors,

issue in respect of the ship, in the prescribed form, a certificate of survey, a passenger certificate or certificates of equipment.

- (5) The Authority may refuse to issue a certificate in respect of a ship under subsection (4) if it is not satisfied that the ship complies with any relevant requirement of this Act which relates to the construction, hull, equipment or machinery of ships.
- (5A) A survey authority may, after the survey of a steamship carried out by or on behalf of the survey authority, issue in respect of the ship, in the prescribed form, a certificate of survey, a passenger certificate or certificates of equipment.
- (5B) A survey authority may refuse to issue a certificate in respect of a ship under subsection (5A) if it is not satisfied that the ship complies with any relevant requirement of this Act which relates to the construction, hull, equipment or machinery of ships.
- (6) Where the Authority is of the opinion:
- (a) that a certificate issued under the law of a State or Territory or of a country other than Australia is equivalent to a certificate of survey or certificate of equipment issued under subsection (4); or
 - (b) that a class of certificates issued under the law of a State or Territory or of a country other than Australia is equivalent to a class of certificates of survey or certificates of equipment issued under subsection (4);
- the Authority may determine, in writing:
- (c) that the certificate or class of certificates is so recognised; or
 - (d) that, if specified conditions are satisfied in relation to the ship in respect of which the certificate was issued or in relation to a ship in respect of which a certificate in the class of certificates was issued, the certificate is so recognised.

195 Duration and extension of certificates

- (1) Subject to this Act, a certificate of survey, a passenger certificate or a certificate of equipment remains in force for such period as is prescribed, or, where a period is specified in the certificate, for that period.
- (1A) Where a ship in respect of which a certificate of survey, a passenger certificate or a certificate of equipment has been issued

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is not in an Australian port at the time when the certificate expires or is about to expire, the Authority may, if it appears proper and reasonable for it so to do, extend the certificate for a period not exceeding 5 months from the date of expiration of the certificate, for the purpose of allowing the ship to proceed to a port specified by the Authority to be surveyed.

- (1B) An extension of a certificate under subsection (1A) is of no further effect upon the arrival of the ship at the port so specified.
- (2) The Authority may, if it appears proper and reasonable so to do and it is satisfied that no danger to the ship or its crew or its passengers or cargo will arise from so doing, extend a certificate of survey, a passenger certificate or a certificate of equipment for such period, not exceeding one month, as it thinks fit.

195A Cancellation of certificates if ship ceases to be registered in Australia

A certificate of survey, a passenger certificate or a certificate of equipment ceases to have effect if the ship in respect of which it was issued ceases to be registered in Australia.

196 Certificates to be made available for examination

The master of a ship in respect of which a certificate of survey, a passenger certificate or a certificate of equipment has been issued must, while the certificate remains in force, ensure that a copy of the certificate is available at all reasonable times for examination on request by any person on board the ship.

Penalty: 5 penalty units.

202 Overcrowding steamships

- (1) The owner or master of a steamship shall not receive or have on board the ship a number of passengers in excess of the number specified in the certificate of the ship as the number of passengers which the ship is fit to carry.

Penalty: \$2,000 and an amount of \$200 for each person on board in excess of the number specified in the certificate of the ship.

- (2) The owner, master or agent of a steamship shall not take payment of passage money from a number of persons in excess of the number specified in the certificate of the ship as the number of passengers which the ship is fit to carry.

Penalty: \$1,000.

- (3) This section does not apply in relation to a voyage upon which, with the consent of the Authority, persons are carried for the purpose of enabling them to be moved from a place in consequence of a threat to their lives.
- (4) In this section, *certificate*, in relation to a ship, means the certificate of survey or passenger certificate, if any, issued in respect of the ship or any certificate issued in respect of the ship by or on behalf of the government of another country that specifies the number of passengers that the ship is fit to carry.

203 Alteration of certificates with respect to number of passengers

- (1) The owner of any steam-ship may at any time apply for an alteration of the certificate of survey or passenger certificate of the ship in regard to the number of passengers it may carry.
- (2) The Authority may, on receipt of the application, and after further survey, permit the certificate of survey or passenger certificate to be amended.

204 Inspection of ships exempt from survey

- (3) A person authorized in writing by the Authority to make inspections under this section may, at any time, inspect a ship which is wholly or partly exempt from survey under the regulations and shall, upon making such an inspection, forthwith report the result of the inspection to the Authority.
- (4) Upon the receipt by the Authority of a report under subsection (3), it may, subject to subsection (5), cancel the exemption of the ship from survey or suspend the operation, for the purposes of this Act, of a certificate in force in respect of the ship, and thereupon the ship becomes liable to survey.
- (5) The Authority shall not cancel the exemption from survey of a ship in respect of which a valid Safety Convention certificate is in force,

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or suspend the operation, for the purposes of this Act, of a valid Safety Convention certificate in force in respect of a ship, unless the Authority has reason to believe:

- (a) that the condition of the ship, or of its equipment, does not substantially correspond with the certificate; and
- (b) that the ship cannot proceed to sea without danger to its crew or passengers.

204A Non-application to certain ships

Notwithstanding anything contained in this Act, any ship, not being bound to a port in Australia, which has been compelled, by stress of weather or *force majeure*, to take refuge in such a port, shall not be subject to any requirements of this Division, or of Division 6A, or of the regulations under section 215, or of the orders made under subsection 425(1AA) if, in the ordinary course of its voyage, the ship would have been exempt from that requirement.

206 Operation of watertight doors etc.

The regulations may make provision for or in relation to the closing, and the periodical trial and operation, of watertight doors, side scuttles, valves and similar contrivances in ships.

Division 2A—Sailing ships

206B Application of Division 2 to sailing ships

The provisions of Division 2, relating to steamships, shall, so far as they are applicable, be deemed to apply also to sailing ships over 50 tons gross tonnage to which Part II applies, and those provisions shall accordingly be read, for the purposes of this Division, as if such sailing ships were included in the word “steamships”.

Division 2B—Issue of safety certificates

206C Interpretation

- (1) In this Division:

nuclear cargo ship means a nuclear ship other than a nuclear passenger ship.

nuclear passenger ship means a nuclear ship carrying more than 12 passengers.

steamship does not include a nuclear ship.

- (2) Section 25C of the *Acts Interpretation Act 1901* does not apply to a safety certificate issued under this Division in respect of a ship in accordance with the Safety Convention.

206D Passenger steamships—safety certificates

- (1) Where, on receipt of declarations of survey in respect of a steamship registered in Australia, the Authority is satisfied that the ship complies with the requirements of this Act that relate to the construction, equipment and machinery of passenger steamships engaged on international voyages, other than short international voyages, or with such of those requirements as are requirements from which it does not propose to exempt the ship, it may issue in respect of the ship, in the prescribed form, a passenger ship safety certificate.
- (2) Where, on receipt of declarations of survey in respect of a steamship registered in Australia, the Authority is satisfied that the ship complies with the requirements of this Act that relate to the construction, equipment and machinery of passenger steamships engaged on short international voyages, or with such of those requirements as are requirements from which it does not propose to exempt the ship, it may issue in respect of the ship, in the prescribed form, a passenger ship short voyage safety certificate.
- (3) If, after the survey of a steamship registered in Australia that is carried out by or on behalf of a survey authority, the survey authority is satisfied that the ship complies with:

- (a) the requirements of this Act that relate to the construction, equipment and machinery of passenger steamships engaged on international voyages, other than short international voyages; or
 - (b) such of those requirements as are requirements from which the Authority has not exempted the ship;
- the survey authority may issue a passenger ship safety certificate in respect of the ship in the prescribed form.
- (4) If, after the survey of a steamship registered in Australia that is carried out by or on behalf of a survey authority, the survey authority is satisfied that the ship complies with:
- (a) the requirements of this Act that relate to the construction, equipment and machinery of passenger steamships engaged on short international voyages; or
 - (b) such of those requirements as are requirements from which the Authority has not exempted the ship;
- the survey authority may issue a passenger ship short voyage safety certificate in respect of the ship in the prescribed form.

206E Cargo steamships—safety construction certificates

- (1) Where, on receipt of declarations of survey in respect of a steamship registered in Australia or a report on the survey of such a ship made by or on behalf of a survey authority, the Authority is satisfied that the ship complies with the requirements of this Act that relate to the construction, fixed equipment and machinery of cargo steamships engaged on international voyages or with such of those requirements as are requirements from which it does not propose to exempt the ship, it may issue in respect of the ship, in the prescribed form, a cargo ship safety construction certificate.
- (2) Where, after the survey of a steamship carried out by or on behalf of a survey authority, the survey authority is satisfied that the ship complies with the requirements of this Act that relate to the construction, fixed equipment and machinery of cargo steamships engaged on international voyages or with such of those requirements as are requirements from which the Authority has not exempted the ship, the survey authority may issue in respect of the ship, in the prescribed form, a cargo ship safety construction certificate.

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- (3) In this section, *fixed equipment* means:
- (a) electrical installations and electrical equipment, other than radio installations and radio equipment; and
 - (b) equipment for communicating between the bridge of a ship and the engine room.

206F Cargo steamships—safety equipment certificates

- (1) Where, on receipt of declarations of survey in respect of a steamship registered in Australia, the Authority is satisfied that the ship complies with the requirements of this Act that relate to the equipment (other than radio equipment or equipment that is fixed equipment for the purposes of section 206E) of cargo steamships engaged on international voyages, or with such of those requirements as are requirements from which it does not propose to exempt the ship, it may issue in respect of the ship, in the prescribed form, a cargo ship safety equipment certificate.
- (2) If, after a survey of a steamship carried out by or on behalf of a survey authority, the survey authority is satisfied that the ship complies with:
- (a) the requirements of this Act that relate to the equipment (other than radio equipment or equipment that is fixed equipment for the purposes of section 206E) of cargo steamships engaged on international voyages; or
 - (b) such of those requirements as are requirements from which the Authority has not exempted the ship;
- the survey authority may issue a cargo ship safety equipment certificate in respect of the ship in the prescribed form.

206G Cargo steamships—safety radio certificates

- (1) Where, on receipt of declarations of survey in respect of a steamship registered in Australia, the Authority is satisfied that the ship complies with the requirements of this Act that relate to the radio equipment of cargo steamships engaged on international voyages, or with such of those requirements as are requirements from which it does not propose to exempt the ship, it may issue in respect of the ship, in the prescribed form, a cargo ship safety radio certificate.

- (2) If, after a survey of a steamship carried out by or on behalf of a survey authority, the survey authority is satisfied that the ship complies with:
- (a) the requirements of this Act that relate to the radio equipment of cargo steamships engaged on international voyages; or
 - (b) such of those requirements as are requirements from which the Authority has not exempted the ship;
- the survey authority may issue a cargo ship safety radio certificate in respect of the ship in the prescribed form.

206GA Cargo steamships—safety certificates

- (1) If, in respect of a steamship registered in Australia, the Authority is satisfied that it could issue:
- (a) a cargo ship safety construction certificate under subsection 206E(1); and
 - (b) a cargo ship safety equipment certificate under section 206F; and
 - (c) a cargo ship safety radio certificate under section 206G;
- it may issue, in the prescribed form, a cargo ship safety certificate in respect of the ship.
- (2) If, in respect of a steamship registered in Australia, a survey authority is satisfied that it could issue:
- (a) a cargo ship safety construction certificate under subsection 206E(2); and
 - (b) a cargo ship safety equipment certificate under subsection 206F(2); and
 - (c) a cargo ship safety radio certificate under subsection 206G(2);
- it may issue a cargo ship safety certificate in respect of the ship in the prescribed form.

206H Exemptions

- (1) Where, under the regulations or orders, the Authority exempts a ship from a requirement of this Act that relates to the construction, hull, equipment or machinery of ships engaged on international voyages, it may issue in respect of the ship, in the prescribed form, an exemption certificate specifying the requirement from which the

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ship is exempt and the conditions, if any, subject to which the ship is exempt.

- (2) Where an exemption certificate specifies conditions subject to which the ship is exempt from a requirement specified in the certificate and the conditions are not complied with, the master and owner of the ship are each guilty of an offence punishable on conviction by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 4 years, or both.
- (3) An offence under subsection (2) is an offence of strict liability.

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

206J Nuclear passenger ships—safety certificates

Where, on receipt of declarations of survey in respect of a nuclear ship registered in Australia, the Authority is satisfied that the ship:

- (a) complies with the requirements of this Act that relate to:
 - (i) the construction, equipment and machinery of passenger steamships engaged on international voyages, other than such of those requirements as do not apply to nuclear passenger ships; and
 - (ii) the construction, equipment and machinery of nuclear passenger ships; and
- (b) conforms to the Safety Assessment of the ship;

it may issue in respect of the ship, in the prescribed form, a nuclear passenger ship safety certificate.

206K Nuclear cargo ships—safety certificates

Where, on receipt of declarations of survey in respect of a nuclear ship registered in Australia, the Authority is satisfied that the ship:

- (a) complies with the requirements of this Act that relate to:
 - (i) the construction, equipment and machinery of cargo steamships engaged on international voyages, other than such of those requirements as do not apply to nuclear cargo ships; and
 - (ii) the construction, equipment and machinery of nuclear cargo ships; and
- (b) conforms to the Safety Assessment of the ship;

it may issue in respect of the ship, in the prescribed form, a nuclear cargo ship safety certificate.

206L Authority may request Safety Convention countries to issue certificates

- (1) The Authority may request the government of a country to which the Safety Convention applies to issue or to authorise the issue of, or to endorse or to authorise the endorsement of, in respect of a ship registered in Australia, a certificate that:
 - (a) by virtue of the Safety Convention or a law of that country which gives effect to that Convention, the government of that country may issue or authorise the issue of, or endorse or authorise the endorsement of in respect of a ship registered in that country; and
 - (b) corresponds, or substantially corresponds, with a certificate which the Authority is empowered under this Division to issue in respect of that ship.
- (2) A certificate issued or endorsed in pursuance of such a request, and containing a statement that it has been so issued or endorsed, has effect, for the purposes of this Act, as if it were a certificate of the kind to which it corresponds issued or endorsed under this Division.

206M Safety Convention countries may request Authority to issue certificates

- (1) The Authority may, at the request of the government of a country to which the Safety Convention applies, issue or authorise the issue of, or endorse or authorise the endorsement of, in respect of a ship registered in that country a certificate that, under this Division, it could issue or authorise the issue of, or endorse or authorise the endorsement of, in respect of that ship if it were registered in Australia.
- (2) A certificate issued or endorsed under this section:
 - (a) shall contain a statement to the effect that it has been issued or endorsed at the request of the government of the country in which the ship is registered; and

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- (b) has effect, for the purposes of this Act, as if it had been issued or endorsed by the government which requested its issue or its endorsement.

206N Duration of certificates

- (1) Subject to this Act, a passenger ship safety certificate, a passenger ship short voyage safety certificate, a cargo ship safety construction certificate, a cargo ship safety equipment certificate, a cargo ship safety radio certificate, a cargo ship safety certificate, an exemption certificate, a nuclear passenger ship safety certificate or a nuclear cargo ship safety certificate remains in force for the period specified in the certificate.
- (2) The period specified in a certificate under subsection (1) must not exceed such period as is prescribed for that kind of certificate.

206P Extension of certificates

The regulations may provide for the extension of certificates in a manner and for the duration set out in Regulation 14 of Chapter 1 of the Safety Convention.

206PA Cancellation of certificates if ship ceases to be registered in Australia

A certificate issued under this Division ceases to have effect if the ship in respect of which it was issued ceases to be registered in Australia.

206Q Certificates to be made available for examination

The master of a ship in respect of which a certificate has been issued under this Division must, while the certificate remains in force, ensure that a copy of the certificate is available at all reasonable times for examination on request by any person on board the ship.

Penalty: 5 penalty units.

Division 2C—Survey and safety certificates required for ships

206R Interpretation

In this Division, *steamship* does not include a nuclear ship.

206S Certificates required for Australian passenger steamships

- (1) The master or owner of a passenger steamship registered in Australia shall not take the ship to sea, or permit the ship to be taken to sea, on an international voyage unless there is in force in respect of the ship:
 - (a) a passenger ship safety certificate or, if the voyage is a short international voyage, a passenger ship short voyage safety certificate; and
 - (b) a passenger certificate;and any exemption certificate in force in respect of the ship applies to the voyage.
- (2) The master or owner of a passenger steamship registered in Australia shall not take the ship to sea, or permit the ship to be taken to sea, on a voyage other than an international voyage unless:
 - (a) there is in force in respect of the ship a certificate of survey appropriate to the voyage; or
 - (b) the master of the ship would not, if the voyage were an international voyage, commit an offence against subsection (1) if he or she took the ship to sea on the voyage.

Penalty: \$10,000 or imprisonment for 4 years, or both.

206T Certificates required for Australian cargo steamships

- (1) The master or owner of a cargo steamship that:
 - (aa) is registered in Australia; and
 - (ab) is of 500 tons or more gross tonnage; and
 - (ac) is not a fishing vessel;must not take the ship to sea, or permit the ship to be taken to sea, on an international voyage unless:

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- (a) there is in force in respect of the ship a passenger ship safety certificate or, if the voyage is a short international voyage, a passenger ship short voyage safety certificate, and any exemption certificate in force in respect of the ship applies to the voyage; or
 - (b) there is in force in respect of the ship:
 - (i) a cargo ship safety construction certificate;
 - (ii) a cargo ship safety equipment certificate; and
 - (iii) a cargo ship safety radio certificate;and any exemption certificate in force in respect of the ship applies to the voyage.
- (2) The master or owner of a cargo steamship that:
- (aa) is registered in Australia; and
 - (ab) either:
 - (i) is of less than 500 tons gross tonnage; or
 - (ii) is of 500 or more tons gross tonnage and is a fishing vessel;
- must not take the ship to sea, or permit the ship to be taken to sea, on an international voyage unless:
- (a) there is in force in respect of the ship:
 - (i) a certificate of survey appropriate to the voyage; or
 - (ii) certificates of equipment appropriate to the voyage and a classification certificate; and
 - (b) if the ship is of 300 or more tons gross tonnage—there is in force in respect of the ship a cargo ship safety radiotelegraphy certificate or a cargo ship safety radiotelephony certificate, and any exemption certificate in force in respect of the ship applies to the voyage.
- (3) The master or owner of a cargo steamship registered in Australia shall not take the ship to sea, or permit the ship to be taken to sea, on a voyage other than an international voyage unless:
- (a) there is in force in respect of the ship a certificate of survey appropriate to the voyage;
 - (b) there is in force in respect of the ship a cargo ship safety construction certificate and certificates of equipment appropriate to the voyage, and any exemption certificate in force in respect of the ship applies to the voyage;

- (c) if the ship is less than 500 tons gross tonnage—there is in force in respect of the ship certificates of equipment appropriate to the voyage and a classification certificate; or
- (d) the master of the ship would not, if the voyage were an international voyage, commit an offence against subsection (1) or (2) if he or she took the ship to sea on that voyage.

Penalty: \$10,000 or imprisonment for 4 years, or both.

206U Certificates required for Australian nuclear ships

- (1) The master or owner of a nuclear ship registered in Australia shall not take the ship to sea, or permit the ship to be taken to sea, unless there is in force in respect of the ship:
 - (a) if the ship is a passenger ship—a nuclear passenger ship safety certificate; or
 - (b) if the ship is a cargo ship—a nuclear passenger ship safety certificate or a nuclear cargo ship safety certificate.

Penalty: \$10,000 or imprisonment for 4 years, or both.

206V Documentary evidence of seaworthiness required for non-Safety Convention ships not registered in Australia

The master or owner of a ship that is not registered in Australia and that is not a Safety Convention ship must not take the ship to sea, or permit the ship to be taken to sea, on a voyage from a port in Australia unless there is in force, in respect of the ship, a certificate or certificates, or other documentary evidence issued by or on behalf of the country in which the ship is registered, attesting to the seaworthiness of the ship.

Penalty: Imprisonment for 4 years.

206W Production of certificates or other documentary evidence

- (1) Where:
 - (a) application is made to an officer of Customs in respect of a ship, other than a Safety Convention ship, for a clearance under the Customs Act for a voyage from a port in Australia; and

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- (b) the master of the ship would contravene section 206S, 206T, 206U or 206V if he or she took the ship to sea on that voyage from that port without there being in force in respect of the ship a certificate or certificates, or, in the case of section 206V, other documentary evidence, as required by that section;
- the master of the ship must, if so required by an officer of Customs, produce to the officer of Customs:
- (c) the certificate or certificates, or, in the case of section 206V, the other documentary evidence so required; and
- (d) any exemption certificate in force in respect of the ship.
- (2) Where application is made to an officer of Customs in respect of a Safety Convention ship for a clearance under the Customs Act for a voyage from a port in Australia, the master of the ship shall, if so required by the officer of Customs, produce to the officer of Customs such valid Safety Convention certificate or valid Safety Convention certificates in respect of the ship as corresponds, or respectively correspond, with such certificate or certificates issued under Division 2B as the master could be required to produce under subsection (1) if:
- (a) the ship were registered in Australia;
- (b) the ship were proceeding on that voyage; and
- (c) in a case where the voyage is not an international voyage, the voyage were such a voyage.
- (3) If an officer of Customs has required the master of a ship to produce to the officer:
- (a) under subsection (1)—such certificate or certificates (including any exemption certificate in force in respect of the ship) and such other documentary evidence, if any, as are referred to in that subsection; or
- (b) under subsection (2)—such Safety Convention certificate or Safety Convention certificates as are referred to in that subsection;
- then, until the certificate or certificates, or other documentary evidence is so produced, the officer of Customs may refuse to grant the clearance, and the ship may be detained.

206X Modification of certificates

Where there is annexed to a valid Safety Convention certificate issued in respect of a ship a memorandum that:

- (a) has been issued by or under the authority of the government of the country in which the ship is registered; and
 - (b) modifies, for the purpose of a particular voyage, by reason of the number of persons carried on that voyage, the particulars stated in the certificate with respect to life-saving appliances;
- the certificate has effect for the purpose of that voyage as if it were modified in accordance with the memorandum.

Division 3—Unseaworthy and substandard ships

207 Definition of seaworthy

- (1) Subject to subsection (2), a ship is to be treated as seaworthy under this Act if, and only if:
 - (a) it is in a fit state as to the condition of hull and equipment, boilers and machinery, the stowage of ballast or cargo, the number and qualifications of crew including officers, and in every other respect, to:
 - (i) encounter the ordinary perils of the voyage then entered upon; and
 - (ii) not pose a threat to the environment; and
 - (b) it is not overloaded.
- (2) If:
 - (a) it is proposed to take a Safety Convention ship to sea on a voyage from a port in Australia; and
 - (b) there is in force in respect of the ship the certificate or certificates that may be required to be produced under subsection 206W(2) in respect of the voyage;the ship is, for the purposes of this Act, to be treated as meeting the condition in subparagraph (1)(a)(i) in relation to that voyage so far as that condition relates to the condition of the ship and its equipment unless the condition of the ship or of its equipment does not correspond substantially with the particulars of that certificate or of any of those certificates.

207A Substandard ships

- (1) A ship is, for the purposes of this Act, substandard if the ship is seaworthy, but conditions on board the ship are clearly hazardous to safety or health.
- (2) In determining whether a ship is substandard, regard shall be had to such matters as are prescribed.

208 Sending unseaworthy ship to sea

- (1) Every person who sends any ship to sea in an unseaworthy state, so that the life of any person is likely to be thereby endangered, shall be guilty of an offence punishable on conviction by a fine not exceeding \$20,000 or imprisonment for a period not exceeding 10 years, or both.
- (1A) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that he or she used all reasonable means to ensure the seaworthiness of the ship.

Note: The defendant bears a legal burden in relation to the matter in subsection (1A) (see section 13.4 of the *Criminal Code*).
- (2) Every master who takes a ship to sea, reckless as to whether the ship is in an unseaworthy state, so that the life of any person is likely to be thereby endangered, shall be guilty of an offence punishable on conviction by a fine not exceeding \$20,000 or imprisonment for a period not exceeding 10 years, or both.
- (4) Nothing in this section shall subject the owner or master of a ship to any liability, by reason of the ship being sent or taken to sea in an unseaworthy state, where, owing to special circumstances, the sending of the ship to sea in that state was reasonable and justifiable.

209 Seaman may claim discharge from unseaworthy or substandard ship

If a ship to which Part II applies is unseaworthy or substandard a seaman belonging to the ship shall not be deemed to have committed a breach of his or her agreement by reason of his or her having refused to sail in the ship while it is unseaworthy or substandard; and any seaman so refusing may claim his or her discharge unless the ship is made seaworthy or ceases to be substandard, as the case may be, within a reasonable time.

210 Detention of unseaworthy and substandard ships

- (1) If it appears to the Authority that a ship is unseaworthy or substandard, the Authority may order the ship to be provisionally detained.

Part IV Ships and shipping

Division 3 Unseaworthy and substandard ships

Section 211

- (2) The Authority shall immediately give the master of the ship notice of the provisional detention, together with a statement of the grounds of the detention.
- (3) The Authority shall direct a person to prepare a report as to whether the ship is unseaworthy or substandard.
- (4) The ship shall be surveyed by a surveyor if a survey is necessary for the preparation of the report.
- (5) Unless the Authority decides to order the ship to be unconditionally released, the Authority shall provide the master of the ship with a copy of the report.
- (6) On receipt of the report, the Authority may:
 - (a) order the ship to be finally detained; or
 - (b) order its release unconditionally or on such conditions as the Authority considers appropriate.
- (7) If an order for the final detention of the ship is made, the ship shall not be released until the Authority is satisfied that its further detention is no longer necessary, and orders its release.

211 Costs of detention

- (1) If it appears that there was no reasonable and probable cause for the provisional detention of the ship, the Authority shall be liable to pay to the owner of the ship his or her costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by the owner by reason of the detention or survey.
- (2) If:
 - (a) a ship is finally detained under this Division;
 - (b) a ship is provisionally detained under this Division and the ship was, at the time of detention, unseaworthy or substandard; or
 - (c) a ship is detained in pursuance of a provision of this Part which provides for the detention of a ship until a certain event occurs;the owner of the ship is liable to pay to the Authority the costs of and incidental to the detention and survey of the ship and those

costs are recoverable by the Authority in a Court of summary jurisdiction.

212 Taking detained ship to sea

If the master of any ship legally detained under this Division takes the ship to sea before it is duly released, the master shall be guilty of an offence punishable on conviction by a fine not exceeding \$20,000 or imprisonment for a period not exceeding 10 years, or both.

213 Security for costs

- (1) Where a complaint is made to the Authority that a ship is unseaworthy or substandard, the Authority may, if it thinks fit, require the complainant to give security to its satisfaction for any costs and compensation which it may become liable to pay in consequence of the detention and survey of the ship.
- (2) Provided that where the complaint is made by 3 or more of the seamen belonging to the ship, and is not in the opinion of the Authority frivolous or vexatious, such security shall not be required, and the Authority shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained.

214 Circumstances where complainant liable for costs of detention

Where a ship is detained in consequence of any complaint, and the circumstances are such that the Authority or the Commonwealth would be liable to pay compensation or costs to the owner of the ship, the complainant shall pay to the Authority all costs incurred and compensation paid by it on account of the detention and survey of the ship.

Division 4—Life-saving appliances and fire protection

215 Regulations may make provision in relation to life-saving and fire prevention

- (1) The regulations may make provision for or in relation to:
 - (a) the saving of life at sea; and
 - (b) the prevention, detection and extinction of fire on ships.
- (2) Without limiting the generality of subsection (1), the regulations which may be made by virtue of that subsection include regulations for or in relation to:
 - (a) the appliances to be carried, and the measures to be observed, on ships for the saving of life at sea and the prevention, detection and extinction of fire on ships; and
 - (b) the exemption of ships from any requirement of this Act that relates to the saving of life at sea or the prevention, detection or extinction of fire on ships.

216A Modification of certificates in respect of life-saving appliances

- (1) If, on any international voyage, a passenger steamship, registered in Australia, in respect of which a passenger ship safety certificate or a passenger ship short voyage safety certificate is in force, has on board a total number of persons less than the number stated in that certificate to be the number for which the life-saving appliances on the steamship provide, the Authority or any person authorized by it for the purpose, may, at the request of the master of the steamship, issue a memorandum stating the total number of persons carried on the steamship on that voyage, and the consequent modifications which may be made for the purpose of that voyage in the particulars with respect to life-saving appliances stated in the certificate, and that memorandum shall be annexed to the certificate.
- (2) Every such memorandum shall be returned to the Authority at the end of the voyage to which it relates.

217 Offences as to appliances

(1) If a ship that does not carry every prescribed life-saving appliance and every prescribed fire appliance goes to sea, the owner of the ship and the master of the ship are each guilty of an offence punishable on conviction by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 4 years, or both.

(1A) An offence under subsection (1) is an offence of strict liability.

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

(2) If the owner of a ship or the master of a ship permits, through neglect, the loss of, or damage to, a life-saving appliance or a fire appliance carried by the ship, the owner or the master, as the case may be, is guilty of an offence punishable on conviction by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 4 years, or both.

(3) If:

- (a) a life-saving appliance, or a fire appliance, that is carried by a ship is lost and is not replaced at the first opportunity;
- (b) a life-saving appliance, or a fire appliance, carried by a ship suffers damage and is not repaired at the first opportunity; or
- (c) at any time a life-saving appliance, or a fire appliance, that is carried by a ship is not fit and ready for use;

the owner of the ship and the master of the ship are each guilty of an offence punishable on conviction by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 4 years, or both.

(4) An offence under subsection (3) is an offence of strict liability.

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

Division 5—Load lines

218 Interpretation

- (1) In this Division, unless the contrary intention appears:

Australian load line certificate means a certificate issued under paragraph 222(b).

international load line certificate means a certificate issued under paragraph 222(a).

international load line exemption certificate means a certificate issued under section 223.

load line means a load line other than a subdivision load line.

Load Line Convention country means a country or territory specified in a notice under section 219.

non-Australian Load Line Convention ship means a ship that is registered in a Load Line Convention country and is a ship to which the Load Line Convention applies.

ship to which the Load Line Convention applies means a ship to which, in accordance with Articles 4 and 5 of the Load Line Convention, that Convention applies.

the conditions of assignment means the regulations which give effect to Chapter II of Annex I to the Load Line Convention, including any application of those regulations to ships or a class of ships not engaged on international voyages or to which the Load Line Convention does not otherwise apply.

valid Load Line Convention certificate means a certificate in the form of the International Load Line Certificate set out in Annex III to the Load Line Convention, being a certificate that:

- (a) is issued in respect of a non-Australian Load Line Convention ship by or with the authority of the government of the country in which the ship is registered; and
- (b) complies with such requirements as are prescribed.

valid Load Line Convention exemption certificate means a certificate in the form of the International Load Line Exemption Certificate set out in Annex III to the Load Line Convention, being a certificate that:

- (a) is issued in respect of a non-Australian Load Line Convention ship by or with the authority of the government of the country in which the ship is registered; and
- (b) complies with such requirements as are prescribed.

219 Declaration of Load Line Convention countries

The Authority may, by notice published in the *Gazette*, declare that, for the purposes of this Part, a country or territory, other than Australia, specified in the notice is a Load Line Convention country or territory.

220 Load line regulations

- (1) The regulations may make provision for and in relation to giving effect to the Load Line Convention and generally may make provision for and in relation to load lines, including the assigning of, and the survey of ships for the purpose of assigning, load lines to ships and the marking of load lines on ships.
- (2) Any regulations or orders that make provision for or in relation to giving effect to the Load Line Convention may be expressed to apply to a ship, or a class of ships, that is not engaged on international voyages or to which the Load Line Convention does not otherwise apply, and may be expressed so to apply without modification or with modifications specified in or to be determined under the regulations or orders, as the case may be.

221 Exemptions

- (1) The Authority may, in relation to a ship that is registered in Australia and is a ship to which the Load Line Convention applies, exercise the right conferred on the government of the Commonwealth by paragraph (1) of Article 6 of the Load Line Convention to exempt a ship from the provisions of the Convention, and a ship so exempted, and the master and owner of the ship, are exempt from compliance with any provision of this

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Division, or any provision of the regulations, that gives effect to the provisions of the Convention.

- (1A) An exemption granted by the Authority under subsection (1) may be granted subject to the condition that such safety requirements as are specified by the Authority in relation to the ship are complied with.
- (1B) The powers of the Authority under subsection (1) to grant an exemption in respect of a ship extend to granting exemptions in respect of ships included in a class of ships.
- (1C) Where safety requirements specified by the Authority under subsection (1A) in relation to a ship are not complied with, the master and owner of the ship are each guilty of an offence punishable on conviction by imprisonment for a period not exceeding 4 years.
- (1D) An offence under subsection (1C) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (2) The Authority may, in relation to a ship that is registered in Australia and is a ship to which the Load Line Convention applies, exercise the right conferred on the government of the Commonwealth by paragraph (2) of Article 6 of the Load Line Convention to exempt a ship from a provision of the Convention, and a ship so exempted, and the master and owner of the ship, are exempt from compliance with any provision of this Division, or any provision of the regulations or orders, that gives effect to that provision of the Convention.
- (3) An exemption granted by the Authority under subsection (2) may be granted subject to the condition that such safety requirements as are specified by the Authority in relation to the ship are complied with.
- (4) Where safety requirements specified by the Authority in relation to a ship under subsection (3) are not complied with, the master and the owner of the ship are each guilty of an offence punishable on conviction by imprisonment for a period not exceeding 4 years.
- (4A) An offence under subsection (4) is an offence of strict liability.

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

- (5) Where a ship registered in Australia, being a ship that is not ordinarily engaged on international voyages but would be a ship to which the Load Line Convention applies if it were engaged on international voyages, undertakes, in exceptional circumstances, a single international voyage, the Authority may, if it is satisfied that the ship complies with safety requirements that, in its opinion, are adequate for the voyage, exempt the ship or the master and owner of the ship, in respect of that voyage, from compliance with any provision of this Division, or any provision of the regulations or orders that relates to load lines.
- (6) Where the Authority is satisfied that it would be unreasonable or impracticable to apply this Division, or a provision of this Division or a provision of the regulations or orders that relates to load lines, to or in relation to a ship that is not a ship to which the Load Line Convention applies, it may, subject to such conditions as it thinks fit for ensuring the safety of the ship and the passengers and crew of the ship, exempt the ship, or the master and owner of the ship, from compliance with the provisions of this Division or from compliance with that provision of this Division or of that provision of the regulations or orders, as the case may be.
- (7) The powers of the Authority under subsection (6) to grant an exemption in respect of a ship extend to granting exemptions in respect of ships included in a class of ships.
- (8) Where a condition specified by the Authority under subsection (6) is not complied with in relation to a ship, the master and owner of the ship are each guilty of an offence punishable on conviction by imprisonment for a period not exceeding 4 years.
- (9) An offence under subsection (8) is an offence of strict liability.

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

222 Issue of load line certificates

Where a ship, other than a non-Australian Load Line Convention ship, except to the extent of any exemption granted by the Authority under section 221, has been surveyed and marked in accordance with the regulations and orders and complies with the conditions of assignment applicable to the ship, the Authority, or a survey authority authorized in writing by the Authority to issue certificates under this section, may issue in respect of the ship:

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- (a) if the ship is registered in Australia and is a ship to which the Load Line Convention applies or would be such a ship if it were engaged on international voyages—a certificate in the form of the International Load Line Certificate set out in Annex III to the Load Line Convention; or
- (b) in any other case—a load line certificate in a form approved by the Authority by instrument in writing.

223 Issue of exemption certificates

Where, under subsection 221(2) or (5), a ship is exempted from compliance with a provision of this Division or a provision of the regulations or orders, the Authority shall issue in respect of the ship a certificate in the form of the International Load Line Exemption Certificate set out in Annex III to the Load Line Convention.

224 Duration, extension and cancellation of certificates

- (1) Subject to this Act, an international load line certificate, an international load line exemption certificate or an Australian load line certificate remains in force for the period specified in the certificate.
- (1A) The period specified in a certificate under subsection (1) must not exceed such period as is prescribed for that kind of certificate.
- (2) Provision may be made in the regulations for and in relation to:
 - (a) the extension, in accordance with paragraph (2) of Article 19 of the Load Line Convention, of an international load line certificate or an international load line exemption certificate issued in respect of an exemption granted under subsection 221(2); and
 - (b) the cancellation, in accordance with paragraph (3) of Article 19 of the Load Line Convention, of such a certificate.
- (3) An international load line certificate or an international load line exemption certificate ceases to have effect if the ship in respect of which it was issued ceases to be registered in Australia.
- (4) The regulations may specify circumstances in which an Australian load line certificate ceases to have effect and may make provision

for and in relation to the extension or cancellation of an Australian load line certificate.

- (5) Where an international load line certificate, an international load line exemption certificate or an Australian load line certificate is cancelled, the certificate is of no force or effect after the Authority has given notice in writing of the cancellation to the owner, agent or master of the ship in respect of which the certificate was issued.
- (6) Where an international load line certificate, an international load line exemption certificate or an Australian load line certificate has expired or has been cancelled, the Authority may require the owner or master of the ship in respect of which the certificate was issued to deliver up the certificate to the Authority or to such other person as the Authority directs, and the ship may be detained until the requirement is complied with.

225 Particulars in certificate to be entered in log-book

- (2) The master of a ship in respect of which an international load line certificate or an Australian load line certificate has been issued shall enter in the official log-book of the ship particulars of the position of the deck line and load lines specified in the certificate.

Penalty: 10 penalty units.

226 Authority may issue certificate at request of Load Line Convention country

- (1) Where:
 - (a) the government of a Load Line Convention country requests the Authority to issue or authorise the issue of, or to endorse or authorise the endorsement of, in respect of a ship that is registered in that country and is a ship to which the Load Line Convention applies, a certificate in the form of the International Load Line Certificate set out in Annex III to the Convention; and
 - (b) the Authority is satisfied that the ship complies with the provisions of the Convention;it may issue or authorise the issue of, or to endorse or authorise the endorsement of, in respect of the ship a certificate in that form.
- (2) A certificate issued or endorsed under this section:

- (a) shall contain a statement to the effect that it has been issued or endorsed at the request of the government of the country in which the ship is registered; and
- (b) has effect, for the purposes of this Division, as if it had been issued or endorsed by that government.

227 Authority may request Load Line Convention country to issue certificates

- (1) The Authority may request the government of a Load Line Convention country to issue, or cause to be issued, in respect of a ship that is registered in Australia and is a ship to which the Load Line Convention applies a certificate in the form of the International Load Line Certificate set out in Annex III to the Load Line Convention.
- (2) A certificate issued in pursuance of such a request and containing a statement that it has been so issued has effect, for the purposes of this Division, as if it had been issued by the Authority under section 222.

227A Ships not to proceed to sea without load line certificates

- (1) The master or owner of a ship registered in Australia shall not take the ship to sea, or permit the ship to be taken to sea, on any voyage, and the master or owner of a ship not registered in Australia, other than a non-Australian Load Line Convention ship, shall not take the ship to sea, or permit the ship to be taken to sea, on a voyage from a port in Australia unless:
 - (a) where the ship is registered in Australia and is a ship to which the Load Line Convention applies or would be such a ship if it were engaged on international voyages—there is in force in respect of the ship an international load line certificate, and any international load line exemption certificate that is in force in respect of the ship applies to the voyage; or
 - (b) in any other case—there is in force in respect of the ship:
 - (i) an Australian load line certificate; or
 - (ii) a certificate, or a certificate in a class of certificates, recognised in a determination made under subsection (1AA) as equivalent to an Australian load line certificate.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (1AA) Where the Authority is of the opinion that a certificate issued under the law of a State or Territory or of a country other than Australia is equivalent to an Australian load line certificate, the Authority may determine, in writing:
- (a) that the certificate is so recognised; or
 - (b) that, if specified conditions are satisfied in relation to the ship in respect of which the certificate was issued, the certificate is so recognised.
- (2) Where the Authority, after having regard to any certificate relating to load lines that is in force in respect of a ship that is not registered in Australia and is not a non-Australian Load Line Convention ship, is satisfied that it can do so without danger to the ship or its passengers or crew, it may, subject to such conditions, if any, as are specified in the exemption, exempt the master and the owner of the ship from compliance with subsection (1) in respect of a voyage specified in the exemption.
- (3) Where application is made to an officer of Customs in respect of a ship, not being a non-Australian Load Line Convention ship, for a clearance under the Customs Act for a voyage from a port in Australia, the master of the ship shall, if so required by the officer of Customs, produce to the officer of Customs the certificate required by subsection (1) to be in force in respect of the ship and any international load line exemption certificate in force in respect of the ship, and the officer of Customs may refuse to grant the clearance, and the ship may be detained, until the certificate is, or the certificates are, produced to that officer.
- (4) Where application is made to an officer of Customs in respect of a non-Australian Load Line Convention ship for a clearance under the Customs Act for a voyage from a port in Australia, the master of the ship shall, if so required by the officer of Customs, produce to the officer of Customs a valid Load Line Convention certificate in respect of the ship and any valid Load Line Convention exemption certificate in force in respect of the ship, and the officer of Customs may refuse to grant the clearance, and the ship may be detained, until the certificate is, or the certificates are, produced to that officer.

227B Ships not to be overloaded

(1) If:

- (a) a ship registered in Australia that is overloaded goes to sea from, or arrives at, any port, or is on any voyage; or
- (b) a ship not registered in Australia that is overloaded goes to sea from, or arrives at, a port in Australia;

the master and owner of the ship are each guilty of an indictable offence punishable upon conviction by a fine not exceeding \$2,000 and by an additional fine not exceeding an amount calculated at the rate of such amount as is applicable to the ship in accordance with the table at the foot of this subsection (having regard to the gross tonnage of the ship if the ship is a passenger ship, or the deadweight tonnage of the ship if the ship is a cargo ship) for each 25 millimetres or part thereof by which the ship is overloaded.

1—Gross tonnage (passenger ships)	Amount
	\$
Not exceeding 1,000 tons	500
Exceeding 1,000 tons but not exceeding 5,000 tons	1,000
Exceeding 5,000 tons but not exceeding 10,000 tons	2,000
Exceeding 10,000 tons but not exceeding 20,000 tons	4,000
Exceeding 20,000 tons but not exceeding 40,000 tons	6,000
Exceeding 40,000 tons	8,000
2—Deadweight tonnage (cargo ships)	
Not exceeding 1,000 tonnes	500
Exceeding 1,000 tonnes but not exceeding 5,000 tonnes.....	1,000
Exceeding 5,000 tonnes but not exceeding 10,000 tonnes.....	2,000
Exceeding 10,000 tonnes but not exceeding 20,000 tonnes.....	4,000
Exceeding 20,000 tonnes but not exceeding 40,000 tonnes.....	6,000
Exceeding 40,000 tonnes	8,000

(1A) An offence under subsection (1) is an offence of strict liability.

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

(2) The Authority may certify in writing, in relation to a ship specified in the certificate, that:

- (a) having regard to the Register Book issued by the Committee of Lloyd's Register of Shipping and Supplements to that Register; or
- (b) having regard to the report of a surveyor furnished to it for the purposes of the certificate;

it is satisfied that, on a date specified in the certificate, the gross tonnage of the ship or the deadweight tonnage of the ship, as the case may be, was such number of tons or tonnes, as the case requires, as is specified in the certificate, and, in proceedings for an offence against subsection (1) in respect of the ship, the certificate is evidence that the gross tonnage of the ship or the deadweight tonnage of the ship, as the case may be, was, on the date so specified, the number of tons or tonnes, as the case requires, so specified.

- (3) It is a defence in proceedings for an offence against subsection (1) in respect of a ship if it is proved that the circumstances giving rise to the offence were due only to a deviation or delay of the ship caused solely by stress of weather or other circumstances which neither the master nor owner of the ship could have prevented or forestalled.

Note: A defendant bears a legal burden in relation to the matter in subsection (3) (see subsection 13.4 of the *Criminal Code*).

227C Detention of ships incorrectly marked

Where:

- (a) a certificate that relates, in whole or in part, to load lines or subdivision load lines is in force in respect of a ship; and
- (b) a surveyor is not satisfied that any deck line, load line or subdivision load line marked on the ship is in the position specified for that line in the certificate;

the ship may be detained until the surveyor is satisfied that the line is in that position.

227D Offences with respect to marks

- (1) If a ship, not being a non-Australian Load Line Convention ship, has been marked in accordance with the regulations or orders with deck lines and load lines and it is not kept so marked, the owner and master of the ship are, in respect of each day during which the ship is not so marked (including the day of a conviction under this

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subsection or any subsequent day), each guilty of an offence punishable on conviction by a fine not exceeding \$1,000.

- (2) Subsection (1) does not apply if the owner or master has reasonable cause.

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

- (3) An offence under subsection (1) is an offence of strict liability.

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

- (4) A person commits an offence if:

- (a) a ship, other than a non-Australian Load Line Convention ship, has been marked with deck lines and load lines; and
- (b) the person engages in conduct; and
- (c) the person's conduct results in the concealment, removal, alteration, defacing or mutilation of any such mark.

Penalty: \$5,000 or imprisonment for 2 years, or both.

227E Inspection of non-Australian Load Line Convention ships

- (1) If a valid Load Line Convention certificate is produced to a surveyor in respect of a non-Australian Load Line Convention ship, his or her powers of inspecting the ship under section 190AA in respect of the matters referred to in subsection (2) of that section are limited to ascertaining:

- (a) whether the ship is overloaded;
- (b) whether the positions of the load lines on the ship correspond with the positions specified in the certificate;
- (c) whether any material alteration that would require the assignment of increased freeboard to the ship has, since the certificate was issued, taken place in the hull or superstructures of the ship;
- (d) whether the fittings and appliances for the protection of openings, guard rails, freeing ports and means of access to the crew's quarters have been maintained on the ship in an effective condition; and
- (e) whether the ship complies with the conditions specified in any valid Load Line Convention exemption certificate in force in respect of the ship.

- (2) If:
- (a) on inspection by a surveyor of a non-Australian Load Line Convention ship in respect of which a valid Load Line Convention certificate is produced, it is found that:
 - (i) a material alteration that would require the assignment of increased freeboard to the ship has, since the certificate was issued, taken place in the hull or superstructures of the ship;
 - (ii) the fittings and appliances for the protection of openings, guard rails, freeing ports and means of access to the crew's quarters have not been maintained on the ship in an effective condition; or
 - (iii) the ship does not comply with any condition specified in any valid Load Line Convention exemption certificate in force in respect of the ship; and
 - (b) the Authority is satisfied that the ship is manifestly unfit to proceed to sea without danger to human life;
- the Authority may declare the ship to be unseaworthy and thereupon the ship shall be deemed to be unseaworthy for the purposes of section 210.

Division 6—Signals of distress

228 Ships to be furnished with distress signals

- (1) The master of a ship shall not take the ship to sea and the owner of a ship shall not permit the ship to go to sea unless it is duly furnished with the prescribed means of making signals of distress.

Penalty: \$5,000 or imprisonment for 2 years, or both.

229 Signals of distress and urgency

- (1) The regulations may make provision for or in relation to signals of distress and urgency and the use and misuse of signals of distress and urgency.
- (2) Section 2 does not apply in relation to this section and regulations made by virtue of this section.

230 Compensation for loss occasioned by improper use of signals

- (1) If a person uses or sends a signal in contravention of the regulations made by virtue of section 229 or of the orders made under subsection 425(1AA), that person shall, in addition to any penalty incurred under the regulations or orders, be liable to pay compensation for any labour undertaken, risk incurred or loss sustained in consequence of the signal having been so used or sent.

Division 6A—Radio equipment

231 Application of Division

Unless the contrary intention appears, this Division, the regulations made by virtue of this Division and the orders made under subsection 425(1AA), do not apply in relation to a Safety Convention ship in respect of which there is in force a valid Safety Convention certificate showing that the ship:

- (a) complies with such of the requirements of the Safety Convention as relate to radio installations and radio navigational aids; or
- (b) is wholly exempt from those requirements or is partly exempt and complies with those requirements to the extent to which it is not exempt.

231A Ships to be equipped with radio installations and radio navigational aids

- (1) The master or owner of a ship shall not take the ship to sea, or permit the ship to be taken to sea, unless the ship complies with the requirements of the regulations and orders with respect to radio installations and radio navigational aids.

Penalty: \$5,000 or imprisonment for 2 years, or both.

231B Radio operators

The master or owner of a ship equipped with a radio installation shall not take the ship to sea, or permit the ship to be taken to sea, unless the ship carries, as part of its crew, such person or persons qualified to operate the radio installation as is or are prescribed.

Penalty: \$2,000 or imprisonment for 12 months, or both.

231C Maintenance and use of radio equipment and radio services

- (1) The master of a ship equipped with a radio installation:
 - (a) shall maintain that radio installation, or cause that radio installation to be maintained, in accordance with the regulations and orders;

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- (b) shall not use that radio installation, or permit that radio installation to be used, otherwise than in accordance with the regulations and orders; and
 - (c) shall maintain, or cause to be maintained, on the ship a radio service in accordance with the regulations and orders.
- (2) The master of a ship equipped with a radio navigational aid:
- (a) shall maintain that radio navigational aid, or cause that radio navigational aid to be maintained, in accordance with the regulations and orders; and
 - (b) shall not use that radio navigational aid, or permit that radio navigational aid to be used, otherwise than in accordance with the regulations and orders.

Penalty: \$5,000 or imprisonment for 2 years, or both.

231D Deficiency in number of operators on Safety Convention ships

Where:

- (a) a ship, including a Safety Convention ship specified in paragraph 231(b), does not carry, as part of its crew, such person or persons qualified to operate any radio installation on the ship as is or are required to be carried on the ship under any certificate in force in respect of the ship; and
- (b) the Authority is satisfied that, in consequence, the ship cannot proceed to sea without danger to its crew or passengers;

the Authority may detain the ship until it is satisfied that the ship can proceed to sea without danger to its crew or passengers.

231E Log-books

The master of a ship equipped with a radio installation:

- (a) shall keep, or cause to be kept, a radio log-book in such form as is prescribed and shall make, or cause to be made, such entries in that log-book as are prescribed; and
- (b) shall make, or cause to be made, in accordance with the regulations and orders, entries in the official log-book of the ship with respect to the operation of the radio installation and the maintenance of a radio service on the ship.

Penalty: \$2,000.

231F Regulations providing for radio installations etc.

- (1) The regulations may make provision for or in relation to the equipping of ships with radio installations and radio navigational aids and the operation, maintenance and use on ships of radio installations and radio navigational aids.
- (2) Without limiting the generality of subsection (1), the regulations which may be made by virtue of that subsection include regulations for or in relation to:
 - (a) specifying the requirements with which radio installations and radio navigational aids on ships shall comply;
 - (b) the means of communication between a radio installation, or a radio navigational aid, on a ship and the bridge of the ship;
 - (c) the survey, inspection and testing of radio installations and radio navigational aids on ships;
 - (d) the exemption of ships from any requirement of this Act which relates to radio installations or radio navigational aids;
 - (e) the issue of certificates in respect of ships which comply with, or are exempt (either in whole or in part) from, the requirements of this Act which relate to radio installations and radio navigational aids;
 - (f) the number of operators, and the grades and qualifications of operators, to be carried on ships to operate radio installations; and
 - (g) the radio services to be maintained on ships.

Division 7—Compasses

232 Regulations

- (1) The regulations may make provision for or in relation to the equipping of ships with compasses and the examination and adjustment of compasses on ships.
- (2) Without limiting the generality of subsection (1), the regulations which may be made by virtue of that subsection include regulations making provision for or in relation to:
 - (a) the licensing of persons as adjusters of compasses;
 - (b) the duties of adjusters of compasses;
 - (c) the issue of certificates, declarations and tables of deviation in respect of compasses;
 - (d) the payment of fees to adjusters of compasses;
 - (e) the keeping of records in respect of the compasses of a ship; and
 - (f) the exemption of ships from any requirement of this Act which relates to compasses.

233 Ships not to be taken to sea without proper compasses

- (1) The master of a ship shall not take the ship to sea, and the owner or agent of a ship shall not permit the ship to go to sea, from a port in Australia unless the ship is equipped with compasses in accordance with the regulations and orders and the compasses on the ship have been adjusted in accordance with the regulations and orders.

Penalty: \$5,000 or imprisonment for 2 years, or both.

234 Ship unseaworthy if not equipped with proper compasses

If a ship is not equipped with compasses in accordance with the regulations and orders, or the compasses on the ship have not been adjusted in accordance with the regulations and orders, the ship shall, for the purposes of this Act, be deemed to be unseaworthy.

Division 8—Musters, drills and checks and tests of machinery and equipment

235 Musters and drills

- (1) The master of a ship:
 - (a) shall ensure that musters, and boat drills, fire drills, collision drills and other prescribed drills, are held in accordance with the regulations and orders; and
 - (b) shall, in accordance with the regulations and orders, make, or cause to be made, in the official log-book of the ship entries relating to the holding of such musters and drills and any failure to hold such a muster or drill.

Penalty: \$2,000.

- (2) Every seaman shall, subject to subsection (3), take part, in accordance with the requirements of the master, in any muster or drill as required by the regulations or orders.

Penalty: \$2,000.

- (3) A seaman shall not be required to take part in a muster or drill within 24 hours before the termination of his or her engagement.

236 Machinery and equipment checks and tests

The master of a ship:

- (a) shall ensure that checks and tests of the machinery and equipment of the ship are conducted as required by the regulations; and
- (b) shall, in accordance with the regulations, make, or cause to be made, in the official log-book of the ship entries relating to the conducting of such checks and tests and any failure to conduct such a check or test.

Penalty: \$2,000.

Division 9—Containers

237 Interpretation

In this Division, *container* has the same meaning as in the Container Convention.

238 Declaration of countries to which the Container Convention applies

- (1) The Authority may, by notice published in the *Gazette*, declare:
 - (a) that a country specified in the notice has ratified, accepted, approved or acceded to the Container Convention or has ratified, accepted, approved or acceded to the Convention subject to reservations specified in the notice, as the case may be, and that the Convention has, or will, come into force or has, or will, come into force subject to those reservations, as the case may be, in respect of that country on a date specified in the notice; or
 - (b) that a country specified in the notice has denounced the Container Convention and that that denunciation has taken, or will take, effect on a date specified in the notice.
- (2) A notice under subsection (1) is, for all purposes, *prima facie* evidence of the matters declared.

239 Certificate by Minister as to amendments of the Container Convention

The Minister may, by writing under his or her hand, certify that the amendments (other than amendments not accepted by Australia) by which the Container Convention was affected, and the amendments (other than amendments objected to by Australia) by which the annexes to that Convention were affected, as at such date as is specified in the certificate are set out in, or annexed to, the certificate, and such a certificate is, for all purposes, *prima facie* evidence of the matters so certified.

240 Regulations to give effect to the Container Convention

- (1) The regulations may make provision for and in relation to giving effect to the Container Convention.
- (3) Regulations giving effect to the Container Convention do not apply in relation to a container in a State or in the Northern Territory to the extent that a law of that State or Territory, as the case may be, makes provision giving effect to that Convention in relation to that container.

241 Safety requirements and tests not required or permitted by the Container Convention not to be imposed

- (1) Nothing in a law of the Commonwealth in force at the commencement of this Division shall, after that commencement, be taken as imposing or authorizing the imposition of structural safety requirements or tests on containers to which the Container Convention applies that are not required or permitted by that Convention to be imposed on such containers.
- (2) Structural safety requirements or tests that are not required or permitted by the Container Convention to be imposed on containers to which that Convention applies shall not be imposed by or under a law of a State or Territory on such containers.
- (3) Nothing in subsection (1) or (2) shall be taken to preclude the application in relation to containers to which the Container Convention applies of a law of the Commonwealth or of a State or Territory that prescribes additional structural safety requirements or tests of a kind referred to in paragraph 2 of Article V of that Convention.

Division 10—Dangerous goods, livestock, grain, deck and other cargoes

248 Definition of dangerous goods

- (1) In this Division, *dangerous goods* means the goods listed in the International Maritime Dangerous Goods Code.
- (2) In subsection (1), *International Maritime Dangerous Goods Code* means the Code of that name that is issued by the International Maritime Organization, as amended from time to time.

249 Shipping of dangerous goods

- (1) A person shall not carry dangerous goods in a ship or place dangerous goods, or cause dangerous goods to be placed, on board a ship for carriage in the ship unless:
 - (a) the outside of the package containing the goods is distinctly marked with a description of the goods; and
 - (b) a description in writing of the goods (not being a description contained in the ordinary shipping documents) is given to the owner or master of the ship at or before the time the goods are placed on board the ship.

Penalty: \$10,000 or imprisonment for 4 years, or both.

- (2) Subsection (1) does not apply to the owner or master of the ship.

250 Powers of owner or master as to dangerous goods

The owner or master of any ship may:

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

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

251 Right to decline to sail in ships carrying dangerous goods

Any seaman may decline to go to sea in a ship to which Part II applies carrying dangerous goods, and any seaman who so

declines, shall, if he or she so requests, be granted a discharge from the ship:

Provided that this section shall not apply where the carriage of the dangerous goods is in accordance with the regulations or express stipulations in the agreement.

252 Forfeiture of dangerous goods

Any dangerous goods carried or shipped in contravention of this Act may be ordered by the Supreme Court of a State or Territory to be forfeited to the Commonwealth, and they shall be forfeited accordingly, notwithstanding that no offence has been committed by the owner of the goods, and that the owner has had no notice of the proceedings or is not before the Court, or that there is no evidence of ownership of the goods.

253 False descriptions

- (1) A person shall not send by or carry in any ship any dangerous goods under a false description.

Penalty: \$10,000 or imprisonment for 4 years, or both.

- (2) Where any dangerous goods are on board a ship, or are to be placed on board a ship, a person shall not falsely describe the sender of the goods on any package containing the goods or in any document relating to the shipping of the goods.

Penalty: \$5,000 or imprisonment for 2 years, or both.

253A Carriage of dangerous goods

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed in regard to the carriage of dangerous goods in ships, and in particular in relation to:
 - (a) the classes of ships in which dangerous goods may be carried;
 - (b) the quantities of dangerous goods that may be carried from any port in Australia in such ships;

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- (c) the precautions to be observed in connexion with the loading and unloading of dangerous goods at any port in Australia; and
 - (d) the conditions as to packing and stowage of dangerous goods, and the ventilation of holds containing dangerous goods, loaded at any port in Australia.
- (2) A person shall not send by, or carry in, a ship any dangerous goods which do not, or the packing, stowing or carriage of which does not, comply with such requirements as are prescribed or are determined by the Authority in accordance with the regulations.

Penalty for contravention of subsection (2): \$10,000 or imprisonment for 4 years, or both.

254 Prohibition on carriage of cargo

- (1) If, in the opinion of the Authority, the carriage of any particular cargo or goods in any ship would endanger its safety or interfere with the comfort of its passengers or crew, it may notify the master or owner accordingly, and the carriage in the ship of the cargo or goods specified in the notice shall be prohibited, and, after receiving such notice, the master shall not take the ship to sea and the owner shall not permit the ship to go to sea with the prohibited cargo or goods therein or thereon.

Penalty: \$10,000 or imprisonment for 4 years, or both.

- (2) The ship may be detained by any officer of Customs, or person authorized by the Authority, until the prohibited cargo or goods have been removed from the ship.

255 Notice of intention to ship

Before any dangerous goods are shipped in any ship, the shipper thereof shall give notice of intention to ship the goods in the manner and to the person prescribed.

Penalty: \$2,000.

257 Loading, stowing, carriage and unloading of cargo

- (1) The regulations may make provision for or in relation to the loading, stowing or carriage of cargo in ships or the unloading of cargo from ships.
- (2) Without limiting the generality of subsection (1), the regulations which may be made by virtue of that subsection include regulations for or in relation to the giving of notices with respect to the loading, or proposed loading, of cargo into ships.
- (3) A person who is guilty of an offence against the regulations made by virtue of this section is punishable on conviction by a fine not exceeding \$5,000.
- (4) In this section, *cargo* includes ballast.

Division 11—Collisions, loss and damage

258 Collisions, lights and signals

- (1) The regulations may prescribe measures to be observed for the prevention of collisions and may make provision for or in relation to the provision and use on ships of lights and signals.
- (2) Without limiting subsection (1), the regulations may make provision for and in relation to giving effect to the Prevention of Collisions Convention.
- (2A) The regulations, so far as they give effect to the Prevention of Collisions Convention, apply, despite section 2, in relation to ships in the areas constituted by:
 - (a) the high seas; and
 - (b) the territorial sea of Australia; and
 - (c) the sea on the landward side of the territorial sea of Australia; and
 - (d) waters other than waters of the sea;as provided by subsections (2B) to (2E) (inclusive).
- (2B) The regulations mentioned in subsection (2A) apply in relation to a ship (other than a ship of a kind referred to in subsection 2(1)) while the ship is in any of the areas mentioned in subsection (2A).
- (2C) Subsection (2B) is not intended to exclude the operation of a State or Territory law, being a law that gives effect to the Prevention of Collisions Convention, in relation to a ship while it is in the area mentioned in paragraph (2A)(b), (c) or (d).
- (2D) The regulations mentioned in subsection (2A) apply in relation to a ship of a kind referred to in subsection 2(1) while the ship is in the area mentioned in paragraph (2A)(a).
- (2E) Subsection (2D) is not intended to exclude the operation of a State or Territory law, being a law that gives effect to the Prevention of Collisions Convention, in relation to a ship while it is in the area mentioned in paragraph (2A)(a).

- (2F) Where proceedings are instituted against a person for an offence, in relation to a particular matter, against:
- (a) a provision of the regulations mentioned in subsection (2A);
or
 - (b) a provision of a law of a State or Territory that gives effect to the Prevention of Collisions Convention;
- proceedings must not also be instituted against the person for an offence, in relation to the same matter, against:
- (c) if paragraph (a) applies—a provision of a kind referred to in paragraph (b); or
 - (d) if paragraph (b) applies—a provision of a kind referred to in paragraph (a).
- (3) The conviction of a person for an offence against the regulations made by virtue of this section or the orders made under subsection 425(1AA) does not relieve that person from civil liability for damage occasioned by a default of that person.
- (4) An offence against the regulations made by virtue of this section is an indictable offence.
- (7) A person who is guilty of an offence against the regulations made by virtue of this section is punishable on conviction:
- (a) if the offender is a natural person—by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 2 years, or both; or
 - (b) if the offender is a body corporate—by a fine not exceeding \$20,000.

258AA Certificate by Minister as to amendments of the Prevention of Collisions Convention

The Minister may, by writing under his or her hand, certify that the amendments, other than amendments objected to by Australia, by which the Prevention of Collisions Convention was affected as at such date as is specified in the certificate are set out in, or annexed to, the certificate, and such a certificate is, for all purposes, *prima facie* evidence of the matters so certified.

258A Careful navigation near ice

The master of a ship registered in Australia, when ice is reported on or near his or her course, shall at night either proceed at a moderate speed or change that course so as to keep amply clear of the ice reported and of the area of danger.

Penalty: Imprisonment for 4 years.

259 Rule as to division of loss

- (1) Where, by fault of 2 or more ships, damage or loss is caused to one or more ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault:
Provided that, if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.
- (2) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which its fault has not contributed.
- (3) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract or shall be construed as imposing any liability upon any person from which he or she is exempted by any contract or by any provision of law or as affecting the right of any person to limit his or her liability in manner provided by law.
- (4) For the purposes of this section, the expression “freight” includes passage money and hire, and references to damage or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses consequent upon that fault, recoverable at law by way of damages.

260 Damages for personal injuries

- (1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships shall be joint and several.
 - (2) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he
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or she might have relied in an action brought against him or her by the person injured or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his or her liability in cases to which this section relates in the manner provided by law.

261 Right of contribution

- (1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owner of one of the ships which exceeds the proportion in which it was in fault, that person may recover by way of contribution the amount of the excess from the owners of the other ships to the extent to which those ships were respectively in fault:

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

- (2) In addition to any other remedy provided by law, the persons entitled to any contribution as provided by subsection (1) shall, for the purposes of recovering the contribution, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

261A Application of sections 259, 260 and 261 to Defence ships

The provisions of sections 259, 260 and 261 apply in the case of ships belonging to, or operated by, the Australian Defence Force as they apply in the case of other ships.

263 Abolition of statutory presumption of fault

- (1) In case of a collision a ship shall not be deemed to be in fault solely by reason of the fact that the ship has infringed any of the regulations for the prevention of collisions at sea.

264 Master to render assistance and abolition of statutory presumption of fault

- (1) In every case of collision between 2 ships it shall be the duty of the person in charge of each ship, if and so far as he or she can do so without danger to his or her own ship, crew, and passengers (if any):
- (a) to render to the other ship, its master, crew, and passengers (if any) such assistance as is practicable and necessary in order to save them from danger caused by the collision; and
 - (b) to stay by the other ship until he or she has ascertained that it has no need of further assistance; and
 - (c) to give to the master or person in charge of the other ship the name of his or her own ship and the port to which it belongs, and also the names of the ports from which it comes and to which it is bound.
- (2) A person in charge of any ship who fails to comply with subsection (1) is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 10 years.
- (2A) Subsection (2) does not apply if the person has reasonable cause.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).
- (3) In case of a collision between 2 ships, the collision shall not be deemed to have been caused by the wrongful act, neglect, or default of the master or person in charge of the ship, who failed to comply with the provisions of that section, solely by reason of the fact that he or she has not complied with the provisions of that section.

265 Obligation to render assistance

- (1) If:
- (a) a ship to which Part II applies is at sea; and
 - (b) the master of the ship has reason to believe that persons on or from a ship or aircraft are in distress;
- the master shall cause his or her ship to proceed with all practicable speed to the assistance of those persons and, if possible, inform them that he or she is so doing.

Penalty: Imprisonment for 4 years.

- (1A) Subsection (1) does not apply if the master is unable to do so or, in the special circumstances of the case, considers it unreasonable or unnecessary to do so.

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

- (2) The master of a ship or aircraft in distress may, after consultation so far as possible with the masters of ships which answer his or her call for assistance, requisition such of those ships as he or she considers best able to render assistance and the master of a ship to which Part II applies so requisitioned shall comply with the requisition by causing his or her ship to proceed with all practicable speed to the assistance of persons in distress on or from the ship or aircraft in distress.

Penalty: Imprisonment for 10 years.

- (3) When the master of a ship which has not been requisitioned is informed of the requisition of another ship and that the requisition is being complied with by that other ship, the master is released from the obligation imposed on him or her by subsection (1).
- (4) If the master of a ship is informed by persons in distress, or by the master of another ship which has reached those persons, that assistance is no longer necessary, the first-mentioned master is released from any obligation imposed on him or her by subsection (1) or (2) in relation to those persons.
- (6) The master of a ship to which Part II applies shall make a record, or cause a record to be made:
- (a) of any information received by him or her that a ship or aircraft is in distress at sea; and
 - (b) if, on receipt of any such information, the master does not proceed to the assistance of persons on or from that ship or aircraft—of his or her reasons for not so proceeding.

Penalty: 50 penalty units.

- (7) A record required to be made under subsection (6) shall be made in the official log-book of the ship.
- (8) This section does not affect the operation of section 317A.

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- (9) Compliance by the master of a ship with the provisions of this section does not affect his or her right, or the right of any other person, to salvage.

265A Liability of charterers etc.

This Division shall apply to any persons (other than the owners) responsible for the fault of a ship as though the expression “owners” included those persons; and in any case where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, this Division shall be read as though for references to the owners there were substituted references to the charterers or other persons for the time being so responsible.

Division 12—Ships carrying or using oil

266 Interpretation

- (1) In this Division, unless the contrary intention appears:

Annex I means Annex I to the Prevention of Pollution from Ships Convention.

Australian ship means:

- (a) a ship registered in Australia; or
- (b) an unregistered ship having Australian nationality.

foreign ship means a ship that is not an Australian ship.

ship construction certificate means a certificate issued under section 267B and includes an International Oil Pollution Prevention Certificate issued in pursuance of Regulation 8 of Annex I, or of the law of a country other than Australia giving effect to that Regulation in relation to an Australian ship.

- (2) Except in so far as the contrary intention appears, an expression that is used in this Division and in the Prevention of Pollution from Ships Convention, including Annex I but not including any other Annex to that Convention, (whether or not a particular meaning is assigned to it by that Convention) has, in this Division, the same meaning as in that Convention.
- (3) For the purposes of this Division, a ship shall not be taken to comply with the provisions of Annex I if it does not comply with the regulations and orders referred to in section 267A.

267 Application of Division

- (1) Section 2 does not have effect in relation to the provisions of this Division.
- (2) The provisions of this Division do not apply in relation to a ship referred to in subsection 2(1) to the extent that a law of a State or of a Territory makes provision giving effect to Regulations 12, 12A, 13, 14, 16, 18, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 of Annex I in relation to that ship.

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- (3) A reference in this section to the provisions of this Division shall be read as including a reference to the provisions of any regulations made for the purposes of section 267A and of any orders made pursuant to any such regulations.

267A Regulations to give effect to certain Regulations of Annex I

The regulations may make provision for and in relation to giving effect to Regulations 12, 12A, 13, 14, 15, 16, 18, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 of Annex I.

267B Ship construction certificates

- (1) Where, on receipt of declarations of survey in respect of an Australian ship, the Authority is satisfied that the ship is constructed in accordance with the provisions of Annex I, it may, whether or not the ship is required by Annex I to be constructed in accordance with those provisions, issue in respect of the ship a ship construction certificate in the prescribed form attesting such compliance.
- (2) Where, after the survey of an Australian ship (being an oil tanker) carried out by a survey authority, the survey authority is satisfied that the ship is constructed in accordance with the provisions of Annex I, the survey authority may, whether or not the ship is required by Annex I to be constructed in accordance with those provisions, issue in respect of the ship a ship construction certificate, in the prescribed form, attesting such compliance.

267C International Oil Pollution Prevention Certificates

Where:

- (a) at the request of the Government of the State under whose authority a foreign ship is operating (not being a ship which is entitled to fly the flag of a State which is not a Party to the Prevention of Pollution from Ships Convention), the Authority has caused that ship to be surveyed; and
- (b) the Authority, on receipt of declarations of survey in respect of that ship, is satisfied that that ship is constructed in accordance with the provisions of Annex I;
- it may, whether or not the ship is required by Annex I to be constructed in accordance with those provisions, issue in respect of

the ship an International Oil Pollution Prevention Certificate in the prescribed form attesting such compliance.

267D Alteration etc. of construction of ships and cancellation of certificates

- (1) Where the construction of an Australian ship in respect of which a ship construction certificate is in force is altered, or such a ship is damaged, in a manner which affects its compliance with the provisions of Annex I, the master or owner of the ship shall, within 7 days after the construction of the ship is altered or the ship is damaged, as the case may be, give a notice in writing of the alteration or damage to such person, and in such form, as are prescribed and, if the notice is not so given, the master and the owner of the ship are each guilty of an offence punishable upon conviction by a fine not exceeding \$1,000.
- (2) Where a notice required to be given under subsection (1) is not given within the period referred to in that subsection, the following provisions of this subsection have effect:
 - (a) the obligation to give the notice continues, notwithstanding that that period has expired, until the notice is given;
 - (b) the master and the owner of the ship are each guilty of a separate and further offence in respect of each day during which the notice is not given, being a day after the expiration of that period;
 - (c) the penalty applicable to each such separate and further offence is a fine not exceeding \$1,000.
- (3) An offence under subsection (1) or (2) is an offence of strict liability.

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

- (5) Where the Authority has reason to believe that:
 - (a) the report of a surveyor in respect of an Australian ship in respect of which a ship construction certificate is in force was fraudulently or erroneously made or obtained;
 - (b) a ship construction certificate has been issued in respect of an Australian ship upon false or erroneous information;
 - (c) the construction of an Australian ship in respect of which a ship construction certificate is in force has been altered, or

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such a ship has been damaged, in a manner which affects its compliance with the provisions of Annex I; or

- (d) the owner of an Australian ship in respect of which a ship construction certificate is in force has failed to comply with section 267E in respect of the ship;

it may, by instrument in writing, cancel the certificate.

- (6) Where the Authority cancels a ship construction certificate issued in respect of an Australian ship, the certificate is of no force or effect after the Authority has given notice in writing of the cancellation addressed to the owner, agent or master of the ship and served in accordance with the regulations.
- (7) Where a ship construction certificate issued in respect of an Australian ship is cancelled under this section, the Authority may, by notice in writing addressed to the owner, agent or master of the ship and served in accordance with the regulations, require the certificate to be delivered up to the Authority or to such other person as the Authority specifies, and the Authority may detain the ship until the requirement is complied with.

267E Ships to be surveyed periodically

- (1) The owner of an Australian ship in respect of which a ship construction certificate is in force shall, at least once during each period that is a prescribed period in relation to the ship for the purposes of this section, cause the ship to be surveyed for the purpose of ensuring its compliance with the provisions of Annex I.
- (2) Where the owner of an Australian ship in respect of which a ship construction certificate is in force fails to comply with subsection (1) in relation to the ship and to a period that is a prescribed period in relation to the ship, the owner is guilty of an offence punishable on conviction by a fine not exceeding \$2,000.
- (3) An offence under subsection (2) is an offence of strict liability.

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

267F Cancellation of certificate if ship ceases to be registered etc.

A ship construction certificate ceases to have effect if the ship in respect of which it was issued ceases to be an Australian ship.

267G Certificates required for Australian ships

- (1) This section applies to an Australian ship that is:
 - (a) an oil tanker of 150 tons gross tonnage and above; or
 - (b) a ship, other than an oil tanker, of 400 tons gross tonnage and above.
- (2) The master of an Australian ship to which this section applies shall not take the ship to sea unless there is in force in respect of the ship a ship construction certificate.

Penalty: \$10,000 or imprisonment for 4 years, or both.
- (3) The owner of an Australian ship to which this section applies shall not permit the ship to be taken to sea unless there is in force in respect of the ship a ship construction certificate.

Penalty: \$10,000 or imprisonment for 4 years, or both.
- (4) The regulations may exempt ships included in a prescribed class of ships from the application of subsection (1), either absolutely or subject to conditions.

267H Certificates to be carried on board Australian ships

The owner of an Australian ship in respect of which a ship construction certificate is in force shall cause the certificate to be carried on board the ship.

Penalty: \$1,000.

267J Production of certificates

Where:

- (a) application is made to an officer of Customs in respect of an Australian ship for a clearance under the Customs Act for a voyage from a port in Australia; and
- (b) the master of the ship would contravene subsection 267G(2) if he or she took the ship to sea without there being in force in respect of the ship a ship construction certificate;

the master of the ship shall, if so required by the officer of Customs, produce to the officer of Customs the ship construction certificate in force in respect of the ship, and the officer of

Customs may refuse to grant the clearance, and the ship may be detained, until the certificate is produced to him or her.

267K Directions in relation to foreign ships

- (1) Subject to subsection (2), where the Authority is of the opinion that a foreign ship is not constructed in accordance with the provisions of Annex I (whether or not the ship is required by Annex I to be so constructed), the Authority may, by notice in writing addressed to the master or the owner of the ship and served in accordance with the regulations, direct:
 - (a) that the ship shall not enter any port, or a specified port or specified ports, in Australia;
 - (b) that the ship shall not use any off-shore terminal, or a specified off-shore terminal or specified off-shore terminals, in Australia;
 - (c) that the ship comply with specified requirements while it is entering, is in or is leaving any port, or a specified port or specified ports, in Australia; or
 - (d) that the ship comply with specified requirements while it is approaching, is using or is leaving any off-shore terminal, or a specified off-shore terminal or specified off-shore terminals, in Australia.
- (2) The Authority shall not exercise its powers under subsection (1) except to the extent that it appears to it necessary or expedient to do so for the protection of the environment.
- (3) Nothing in this section shall be taken to prevent the issuing of more than one direction under subsection (1) in relation to a ship.
- (4) If:
 - (a) the master or owner of a ship is served with a notice under subsection (1); and
 - (b) the master or owner does not comply with any direction contained in that notice;the master and the owner each commit an offence punishable on conviction by a fine not exceeding 100 penalty units.
- (4A) An offence under subsection (4) is an offence of strict liability.

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

- (5) If:
- (a) the master or owner of a ship is served with a notice under subsection (1); and
 - (b) the master or owner does not comply with any direction contained in that notice; and
 - (c) the master or owner is reckless as to whether there is a failure to comply with that direction;
- the master and the owner each commit an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (6) In proceedings for an offence against subsection (4) or (5) in relation to a failure to comply with a direction under subsection (1), it is a defence if it is proved:
- (a) that the failure to comply with the direction resulted from the need to save life at sea or was due to an emergency involving a threat to a person's life; or
 - (b) that compliance with the direction was not possible.

Division 12A—Ships carrying noxious liquid substances in bulk

267M Interpretation

- (1) In this Division, unless the contrary intention appears:

Annex II means Annex II to the Prevention of Pollution from Ships Convention.

Australian ship means:

- (a) a ship registered in Australia; or
- (b) an unregistered ship having Australian nationality.

chemical tanker construction certificate means a certificate issued under section 267Q.

foreign ship means a ship that is not an Australian ship.

- (2) Except in so far as the contrary intention appears, an expression that is used in this Division and in the Prevention of Pollution from Ships Convention, including Annex II but not including any other Annex to that Convention, (whether or not a particular meaning is assigned to it by that Convention) has, in this Division, the same meaning as in that Convention.
- (3) For the purposes of this Division, a ship shall not be taken to comply with the provisions of Annex II if it does not comply with the regulations and orders referred to in section 267P.

267N Application of Division

- (1) Section 2 does not have effect in relation to the provisions of this Division.
- (2) The provisions of this Division do not apply in relation to a ship referred to in paragraph 2(1)(a) to the extent that a law of a State or of a Territory makes provision giving effect to Regulation 11 of Annex II in relation to that ship.
- (3) A reference in this section to the provisions of this Division shall be read as including a reference to the provisions of any

regulations made for the purposes of section 267P and of any orders made pursuant to any such regulations.

267P Regulations to give effect to regulation 11 of Annex II

The regulations may make provision for and in relation to giving effect to regulation 11 of Annex II.

267Q Chemical tanker construction certificates

- (1) Where, on receipt of declarations of survey in respect of an Australian ship, the Authority is satisfied that the ship is constructed in accordance with the provisions of Annex II, it may, whether or not the ship is required by Annex II to be constructed in accordance with those provisions, issue in respect of the ship a chemical tanker construction certificate in the prescribed form attesting such compliance.
- (2) Where, after the survey of an Australian ship carried out by a survey authority, the survey authority is satisfied that the ship is constructed in accordance with the provisions of Annex II, the survey authority may, whether or not the ship is required by Annex II to be constructed in accordance with those provisions, issue in respect of the ship a chemical tanker construction certificate, in the prescribed form, attesting such compliance.

267R International Pollution Prevention Certificates for the Carriage of Noxious Liquid Substances in Bulk

Where:

- (a) at the request of the Government of the State under whose authority a foreign ship is operating (not being a ship which is entitled to fly the flag of a State which is not a Party to the Prevention of Pollution from Ships Convention), the Authority has caused that ship to be surveyed; and
- (b) the Authority, on receipt of declarations of survey in respect of that ship, is satisfied that that ship is constructed in accordance with the provisions of Annex II;

it may, whether or not the ship is required by Annex II to be constructed in accordance with those provisions, issue in respect of the ship an International Pollution Prevention Certificate for the

Carriage of Noxious Liquid Substances in Bulk in the prescribed form attesting such compliance.

267S Alteration etc. of construction of ships and cancellation of certificates

- (1) Where the construction of an Australian ship in respect of which a chemical tanker construction certificate is in force is altered, or such a ship is damaged, in a manner which affects its compliance with the provisions of Annex II, the master or owner of the ship shall, within 7 days after the construction of the ship is altered or the ship is damaged, as the case may be, give a notice in writing of the alteration or damage to such person, and in such form, as are prescribed and, if the notice is not so given, the master and the owner of the ship are each guilty of an offence punishable upon conviction by a fine not exceeding \$1,000.
- (1A) Without limiting the generality of subsection (1), an Australian ship in respect of which a chemical tanker construction certificate is in force shall, for the purposes of that subsection, be taken to be damaged if the ship becomes unfit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.
- (2) Where a notice required to be given under subsection (1) is not given within the period referred to in that subsection, the following provisions of this subsection have effect:
 - (a) the obligation to give the notice continues, notwithstanding that that period has expired, until the notice is given;
 - (b) the master and the owner of the ship are each guilty of a separate and further offence in respect of each day during which the notice is not given, being a day after the expiration of that period;
 - (c) the penalty applicable to each such separate and further offence is a fine not exceeding \$1,000.
- (3) An offence under subsection (1) or (2) is an offence of strict liability.

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

- (5) Where the Authority has reason to believe that:
- (a) the report of a surveyor in respect of an Australian ship in respect of which a chemical tanker construction certificate is in force was fraudulently or erroneously made or obtained;
 - (b) a chemical tanker construction certificate has been issued in respect of an Australian ship upon false or erroneous information;
 - (c) the construction of an Australian ship in respect of which a chemical tanker construction certificate is in force has been altered, or such a ship has been damaged, in a manner which affects its compliance with the provisions of Annex II; or
 - (d) the owner of an Australian ship in respect of which a chemical tanker construction certificate is in force has failed to comply with section 267S in respect of the ship;
- it may, by instrument in writing, cancel the certificate.
- (6) Where the Authority cancels a chemical tanker construction certificate issued in respect of an Australian ship, the certificate is of no force or effect after the Authority has given notice in writing of the cancellation addressed to the owner, agent or master of the ship and served in accordance with the regulations.
- (7) Where a chemical tanker construction certificate issued in respect of an Australian ship is cancelled under this section, the Authority may, by notice in writing addressed to the owner, agent or master of the ship and served in accordance with the regulations, require the certificate to be delivered up to the Authority or to such other person as the Authority specifies, and the Authority may detain the ship until the requirement is complied with.

267T Ships to be surveyed periodically

- (1) The owner of an Australian ship in respect of which a chemical tanker construction certificate is in force shall, at least once during each period that is a prescribed period in relation to the ship for the purposes of this section, cause the ship to be surveyed for the purpose of ensuring its compliance with the provisions of Annex II.
- (2) Where the owner of an Australian ship in respect of which a chemical tanker construction certificate is in force fails to comply with subsection (1) in relation to the ship and to a period that is a

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prescribed period in relation to the ship, the owner is guilty of an offence punishable on conviction by a fine not exceeding \$2,000.

- (3) An offence under subsection (2) is an offence of strict liability.

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

267U Cancellation of certificate if ship ceases to be an Australian ship

A chemical tanker construction certificate ceases to have effect if the ship in respect of which it was issued ceases to be an Australian ship.

267V Certificates required for Australian ships

- (1) Where an Australian ship is constructed or adapted so that it can carry as cargo, or part cargo, in bulk any liquid substance, the master of that ship shall not take that ship to sea, and the owner of that ship shall not permit that ship to be taken to sea, unless there is in force in respect of that ship a chemical tanker construction certificate.

Penalty: \$10,000 or imprisonment for 4 years, or both.

- (2) The regulations may exempt ships included in a prescribed class of ships from the application of subsection (1), either absolutely or subject to conditions.

267W Certificates to be carried on board Australian ships

The owner of an Australian ship in respect of which a chemical tanker construction certificate is in force shall cause the certificate to be carried on board the ship.

Penalty: \$1,000.

267X Production of certificates

Where:

- (a) application is made to an officer of Customs in respect of an Australian ship for a clearance under the Customs Act for a voyage from a port in Australia; and

- (b) the master of the ship would contravene subsection 267V(1) if he or she took the ship to sea without there being in force in respect of the ship a chemical tanker construction certificate;

the master of the ship shall, if so required by the officer of Customs, produce to the officer of Customs the chemical tanker construction certificate in force in respect of the ship, and the officer of Customs may refuse to grant the clearance, and the ship may be detained, until the certificate is produced to him or her.

267Y Directions in relation to foreign ships

- (1) Subject to subsection (2), where the Authority is of the opinion that a foreign ship is not constructed in accordance with the provisions of Annex II (whether or not the ship is required by Annex II to be so constructed), the Authority may, by notice in writing addressed to the master or the owner of the ship and served in accordance with the regulations, direct:
 - (a) that the ship shall not enter any port, or a specified port or specified ports, in Australia;
 - (b) that the ship shall not use any off-shore terminal, or a specified off-shore terminal or specified off-shore terminals, in Australia;
 - (c) that the ship comply with specified requirements while it is entering, is in or is leaving any port, or a specified port or specified ports, in Australia; or
 - (d) that the ship comply with specified requirements while it is approaching, is using or is leaving any off-shore terminal, or a specified off-shore terminal or specified off-shore terminals, in Australia.
- (2) The Authority shall not exercise its powers under subsection (1) except to the extent that it appears to it necessary or expedient to do so for the protection of the environment.
- (3) Nothing in this section shall be taken to prevent the issuing of more than one direction under subsection (1) in relation to a ship.
- (4) If:
 - (a) the master or owner of a ship is served with a notice under subsection (1); and

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- (b) the master or owner does not comply with any direction contained in that notice;
the master and the owner each commit an offence punishable on conviction by a fine not exceeding 100 penalty units.
- (4A) An offence under subsection (4) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (5) If:
- (a) the master or owner of a ship is served with a notice under subsection (1); and
 - (b) the master or owner does not comply with any direction contained in that notice; and
 - (c) the master or owner is reckless as to whether there is a failure to comply with that direction;
- the master and the owner each commit an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (6) In proceedings for an offence against subsection (4) or (5) in relation to a failure to comply with a direction under subsection (1), it is a defence if it is proved:
- (a) that the failure to comply with the direction resulted from the need to save life at sea or was due to an emergency involving a threat to a person's life; or
 - (b) that compliance with the direction was not possible.

Division 12B—Ships carrying packaged harmful substances

267ZA Interpretation

- (1) In this Division, unless the contrary intention appears:

Annex III means Annex III to the Prevention of Pollution from Ships Convention.

Australian ship means:

- (a) a ship registered in Australia; or
- (b) an unregistered ship having Australian nationality.

foreign ship means a ship that is not an Australian ship.

- (2) Except in so far as the contrary intention appears, an expression that is used in this Division and in the Prevention of Pollution from Ships Convention, including Annex III but not including any other Annex to that Convention, (whether or not a particular meaning is assigned to it by that Convention) has, in this Division, the same meaning as in that Convention.
- (3) For the purposes of this Division, a ship shall not be taken to comply with the provisions of Annex III if it does not comply with the regulations and orders referred to in section 267ZC.

267ZB Application of Division

- (1) Section 2 does not have effect in relation to the provisions of this Division.
- (2) The provisions of this Division do not apply in relation to a ship referred to in subsection 2(1) to the extent that a law of a State or Territory makes provision giving effect to Regulations 1 to 6 (inclusive) of Annex III in relation to that ship.
- (3) A reference in this section to the provisions of this Division shall be read as including a reference to the provisions of any regulations made for the purposes of subsection 267ZC(1) and of any orders made pursuant to any such regulations.

267ZC Regulations to give effect to Regulations 1 to 6 (inclusive) of Annex III

- (1) The regulations may make provision for and in relation to giving effect to Regulations 1 to 6 (inclusive) of Annex III.
- (2) Without limiting the generality of subsection (1), regulations made for the purposes of that subsection may empower the Minister to make orders with respect to any matter for or in relation to which provision may be made by the regulations by virtue of this section.

Division 12C—Sewage

267ZD Interpretation

- (1) In this Division, unless the contrary intention appears:

Annex IV means Annex IV to the Prevention of Pollution from Ships Convention.

Australian ship means:

- (a) a ship registered in Australia; or
- (b) an unregistered ship having Australian nationality;

foreign ship means a ship that is not an Australian ship.

sewage certificate means an International Sewage Pollution Prevention Certificate issued under section 267ZG or 267ZH.

- (2) Except in so far as the contrary intention appears, an expression that is used in this Division and in the Prevention of Pollution from Ships Convention, including Annex IV but not including any other Annex to that Convention, (whether or not a particular meaning is assigned to it by that Convention) has, in this Division, the same meaning as in that Convention.
- (3) For the purposes of this Division, a ship shall not be taken to comply with the provisions of Annex IV if it does not comply with the regulations and orders referred to in section 267ZF.

267ZE Application of Division

- (1) Section 2 does not have effect in relation to the provisions of this Division.
- (2) Subject to subsection (3), the provisions of this Division apply to a ship included in a prescribed class of ships.
- (3) The provisions of this Division do not apply to a ship referred to in subsection 2(1) to the extent that a law of a State or of a Territory makes provision giving effect to Regulations 4, 5, 7, 8, 9 and 10 of Annex IV in relation to that ship.

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- (4) A reference in this section to the provisions in this Division shall be read as including a reference to the provisions of any regulations made for the purposes of subsection 267ZF and of any orders made pursuant to any such regulations.

267ZF Regulations to give effect to Regulations 4, 9 and 10 of Annex IV

The regulations may make provision for, and in relation to, giving effect to Regulations 4, 9 and 10 of Annex IV.

267ZG International Sewage Pollution Prevention Certificates for Australian ships

- (1) Where, on receipt of declarations of survey in respect of an Australian ship, the Authority is satisfied that the ship is constructed in accordance with the provisions of Annex IV, the Authority may, whether or not the ship is required by Annex IV to be constructed in accordance with those provisions, issue in respect of the ship an International Sewage Pollution Prevention Certificate in the prescribed form attesting such compliance.
- (2) If, after the survey of an Australian ship carried out by a survey authority, the survey authority is satisfied that the ship is constructed in accordance with the provisions of Annex IV, the survey authority may, whether or not the ship is required by Annex IV to be constructed in accordance with those provisions, issue in respect of the ship an International Sewage Pollution Prevention Certificate in the prescribed form attesting such compliance.

267ZH International Sewage Pollution Prevention Certificates for foreign ships

Where:

- (a) at the request of the Government of the State under whose authority a foreign ship is operating (not being a ship which is entitled to fly the flag of a State which is not a Party to the Prevention of Pollution from Ships Convention), the Authority has caused that ship to be surveyed; and
- (b) the Authority, on receipt of declarations of survey in respect of that ship, is satisfied that the ship is constructed in accordance with the provisions of Annex IV;

the Authority may, whether or not the ship is required by Annex IV to be constructed in accordance with those provisions, issue in respect of the ship an International Sewage Pollution Prevention Certificate in the prescribed form attesting such compliance.

267ZJ Alteration etc. of construction of ships and cancellation of certificates

- (1) Where the construction of an Australian ship in respect of which a sewage certificate is in force is altered, or such a ship is damaged, in a manner which affects its compliance with the provisions of Annex IV, the master or owner of the ship shall, within 7 days after the construction of the ship is altered or the ship is damaged, as the case may be, give a notice in writing of the alteration or damage to such person, and in such form, as are prescribed and, if the notice is not so given, the master and the owner of the ship are each guilty of an offence punishable upon conviction by a fine not exceeding \$1,000.
- (2) Where a notice required to be given under subsection (1) is not given within the period referred to in that subsection, the following provisions of this subsection have effect:
 - (a) the obligation to give the notice continues, notwithstanding that that period has expired, until the notice is given;
 - (b) the master and the owner of the ship are each guilty of a separate and further offence in respect of each day during which the notice is not given, being a day after the expiration of that period;
 - (c) the penalty applicable to each such separate and further offence is a fine not exceeding \$1,000.
- (2A) An offence under subsection (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) Where the Authority has reason to believe that:
 - (a) the report of a surveyor in respect of an Australian ship in respect of which a sewage certificate is in force was fraudulently or erroneously made or obtained; or
 - (b) a sewage certificate has been issued in respect of an Australian ship upon false or erroneous information; or

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- (c) the construction of an Australian ship in respect of which a sewage certificate is in force has been altered, or such a ship has been damaged, in a manner which affects its compliance with the provisions of Annex IV; or
 - (d) the owner of an Australian ship in respect of which a sewage certificate is in force has failed to comply with subsection 267ZK(1) in respect of the ship;
- the Authority may, by instrument in writing, cancel the certificate.
- (4) Where the Authority cancels a sewage certificate issued in respect of an Australian ship, the certificate is of no force or effect after the Authority has given notice in writing of the cancellation addressed to the owner, agent or master of the ship and served in accordance with the regulations.
 - (5) If a sewage certificate issued in respect of an Australian ship is cancelled under this section, the Authority may:
 - (a) require the certificate to be given to a specified person; and
 - (b) detain the ship until the requirement is complied with.
 - (6) The requirement under paragraph (5)(a) must be:
 - (a) made by notice in writing; and
 - (b) addressed to the owner, agent or master of the ship; and
 - (c) served in accordance with the regulations.
 - (7) Without limiting subsection (1) or (3), an Australian ship in respect of which a sewage certificate is in force must be taken to be damaged if the ship is unfit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

267ZK Ships to be surveyed periodically

- (1) The owner of an Australian ship in respect of which a sewage certificate is in force shall, at least once during each period that is a prescribed period in relation to the ship for the purposes of this section, cause the ship to be surveyed for the purpose of ensuring its compliance with the provisions of Annex IV.
- (2) Where the owner of an Australian ship in respect of which a sewage certificate is in force fails to comply with subsection (1) in relation to the ship and to a period that is a prescribed period in

relation to the ship, the owner is guilty of an offence punishable upon conviction by a fine not exceeding \$2,000.

- (3) An offence under subsection (2) is an offence of strict liability.

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

267ZL Cancellation of sewage certificate if ship ceases to be an Australian ship

A sewage certificate ceases to have effect if the ship in respect of which it was issued ceases to be an Australian ship.

267ZM Certificates required for Australian ships

- (1) The master of an Australian ship to which this Division applies shall not take that ship to sea unless a sewage certificate is in force in respect of that ship.

Penalty: \$10,000 or imprisonment for 4 years, or both.

- (2) The owner of an Australian ship to which this Division applies shall not permit that ship to be taken to sea unless a sewage certificate is in force in respect of that ship.

Penalty: \$10,000 or imprisonment for 4 years, or both.

- (3) The regulations may exempt ships included in a prescribed class of ships from the application of subsections (1) and (2), either absolutely or subject to conditions.

267ZN Certificates to be carried on board Australian ships

The owner of an Australian ship in respect of which a sewage certificate is in force shall cause the certificate to be carried on board the ship.

Penalty: \$1,000.

267ZP Production of certificates

Where:

- (a) application is made to an officer of Customs in respect of an Australian ship for a clearance under the Customs Act for a voyage from a port in Australia; and

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(b) the master of the ship would contravene subsection 267ZM(1) if the master took the ship to sea without there being in force in respect of the ship a sewage certificate; the master of the ship shall, if so required by the officer of Customs, produce to the officer of Customs the sewage certificate in force in respect of the ship, and the officer of Customs may refuse to grant the clearance, and the ship may be detained, until the certificate is produced to the officer.

267ZQ Directions in relation to foreign ships

- (1) Subject to subsection (2), where the Authority is of the opinion that a foreign ship is not constructed in accordance with the provisions of Annex IV (whether or not the ship is required by Annex IV to be so constructed), the Authority may, by notice in writing addressed to the master or the owner of the ship and served in accordance with the regulations, direct:
 - (a) that the ship shall not enter any port, or a specified port or specified ports, in Australia; or
 - (b) that the ship shall not use any off-shore terminal, or a specified off-shore terminal or specified off-shore terminals, in Australia; or
 - (c) that the ship comply with specified requirements while it is entering, is in or is leaving any port, or a specified port or specified ports, in Australia; or
 - (d) that the ship comply with specified requirements while it is approaching, is using or is leaving any off-shore terminal, or a specified off-shore terminal or specified off-shore terminals, in Australia.
- (2) The Authority shall not exercise its powers under subsection (1) except to the extent that it appears to the Authority necessary or expedient to do so for the protection of the environment.
- (3) Nothing in this section shall be taken to prevent the issuing of more than one direction under subsection (1) in relation to a ship.
- (4) If:
 - (a) the master or owner of a ship is served with a notice under subsection (1); and
 - (b) the master or owner does not comply with any direction contained in that notice;

the master and the owner each commit an offence punishable on conviction by a fine not exceeding 100 penalty units.

- (4A) An offence under subsection (4) is an offence of strict liability.

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

- (5) If:

- (a) the master or owner of a ship is served with a notice under subsection (1); and
- (b) the master or owner does not comply with any direction contained in that notice; and
- (c) the master or owner is reckless as to whether there is a failure to comply with that direction;

the master and the owner each commit an offence punishable on conviction by a fine not exceeding 500 penalty units.

- (6) In proceedings for an offence against subsection (4) or (5) in relation to a failure to comply with a direction under subsection (1), it is a defence if it is proved:

- (a) that the failure to comply with the direction resulted from the need to save life at sea or was due to an emergency involving a threat to a person's life; or
- (b) that compliance with the direction was not possible.

267ZS Operation of Division

In spite of anything in the *Protection of the Sea Legislation Amendment Act 1986*, this Division does not commence until a day fixed by Proclamation for the purposes of this section.

Division 12D—Air pollution

267ZT Definitions

- (1) In this Division:

air pollution prevention certificate means an air pollution prevention certificate issued under subsection 267ZW(1) or (2) and includes an International Air Pollution Prevention Certificate issued for the purposes of:

- (a) regulation 7 of Annex VI; or
- (b) the law of a foreign country giving effect to that regulation for an Australian ship.

Annex VI means Annex VI to the Prevention of Pollution from Ships Convention.

Australian ship means:

- (a) a ship registered in Australia; or
- (b) an unregistered ship having Australian nationality.

foreign ship means a ship that is not an Australian ship.

- (2) An expression that is used:

- (a) in this Division; and
- (b) in the Prevention of Pollution from Ships Convention, including Annex VI but not including any other Annex to that Convention;

has, in this Division, the same meaning as in that Convention (whether or not a particular meaning is assigned to it by that Convention).

- (3) For the purposes of this Division, a ship is taken not to comply with Annex VI if it does not comply with the regulations and orders made for the purposes of section 267ZV.

267ZU Application of Division

- (1) Section 2 does not have effect in relation to this Division.

- (2) This Division does not apply in relation to a ship referred to in subsection 2(1) so far as a law of a State or Territory gives effect to Regulations 5, 6, 8, 9, 13 and 16 of Annex VI in relation to that ship.
- (3) A reference in this section to this Division includes a reference to any regulations or orders made for the purposes of section 267ZV.

267ZV Regulations to give effect to Regulations 5, 6, 8, 9, 13 and 16 of Annex VI

The regulations may make provision for and in relation to giving effect to Regulations 5, 6, 8, 9, 13 and 16 of Annex VI.

267ZW Air pollution prevention certificates for Australian ships

- (1) The Authority must issue an air pollution prevention certificate for an Australian ship of 400 gross tonnage or above, in the approved form, if, on the basis of declarations of survey in respect of the ship, the Authority is satisfied that the ship is constructed in accordance with Annex VI.
- (2) A survey authority may issue an air pollution prevention certificate for an Australian ship of 400 gross tonnage or above, in the approved form, if:
 - (a) the survey authority surveys the ship; and
 - (b) on the basis of the survey, the survey authority is satisfied that the ship is constructed in accordance with Annex VI.
- (3) For the purposes of subsections (1) and (2), it does not matter whether the ship is required by Annex VI to comply with that Annex.
- (4) An air pollution prevention certificate issued under subsection (1) or (2) is not a legislative instrument.

267ZX International Air Pollution Prevention Certificates for foreign ships

- (1) The Authority may issue an International Air Pollution Prevention Certificate for a foreign ship, in the approved form, if:

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- (a) the ship is not a ship that is entitled to fly the flag of a State that is not a Party to the Prevention of Pollution from Ships Convention; and
 - (b) the Authority has caused the ship to be surveyed; and
 - (c) the survey was carried out at the request of the government of the State under whose authority the ship is operating; and
 - (d) on the basis of the declarations of survey in respect of the ship, the Authority is satisfied that that ship is constructed in accordance with Annex VI.
- (2) For the purposes of subsection (1), it does not matter whether the ship is required by Annex VI to comply with that Annex.
- (3) An air pollution prevention certificate issued under subsection (1) is not a legislative instrument.

267ZY Obligation to report damage etc. to ship

- (1) If:
- (a) an Australian ship has a current air pollution prevention certificate; and
 - (b) something happens to the ship that affects its compliance with Annex VI; and
 - (c) notice of the happening is not given in accordance with the regulations within 7 days after the happening;
- then the master and the owner each commit an offence for each subsequent day that passes without the notice having been given.
- Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

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

267ZZ Authority may cancel certificates

- (1) The Authority may cancel an air pollution prevention certificate that is in force for an Australian ship if the Authority has reason to believe that:
- (a) the report of a surveyor in respect of the ship was fraudulently or erroneously made or obtained; or
 - (b) the certificate was issued upon false or erroneous information; or
-

- (c) the construction of the ship has been altered, or damaged, in a manner that affects the ship's compliance with Annex VI; or
 - (d) the owner of the ship has failed to comply with section 267ZZA in respect of the ship.
- (2) The Authority may cancel an air pollution prevention certificate under subsection (1) whether or not the certificate was issued by the Authority.
- (3) The cancellation takes effect when the Authority gives written notice of the cancellation:
- (a) addressed to the owner, agent or master of the ship; and
 - (b) served in accordance with the regulations.
- (4) If an air pollution prevention certificate for a ship is cancelled, the Authority may:
- (a) require the certificate to be given to a specified person; and
 - (b) detain the ship until the requirement is complied with.
- (5) The requirement under paragraph (4)(a) must be:
- (a) made by notice in writing; and
 - (b) addressed to the owner, agent or master of the ship; and
 - (c) served in accordance with the regulations.
- (6) A notice under paragraph (5)(a) is not a legislative instrument.

267ZZA Ships to be surveyed periodically

- (1) A person commits an offence if:
- (a) an air pollution prevention certificate is in force for an Australian ship; and
 - (b) the person is the owner of the ship; and
 - (c) the person does not, at least once in each prescribed period in relation to the ship, cause the ship to be surveyed to ensure it complies with Annex VI.

Penalty: 60 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

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

267ZZB Certificate lapses if ship ceases to be Australian ship

An air pollution prevention certificate issued for an Australian ship ceases to have effect if the ship ceases to be an Australian ship.

267ZZC Certificates required for Australian ships

- (1) A person commits an offence if:
- (a) the person takes a ship to sea; and
 - (b) the ship is an Australian ship that is of 400 gross tonnage or above; and
 - (c) the person is the master of the ship; and
 - (d) an air pollution prevention certificate is not in force for the ship.

Penalty: 100 penalty units.

- (2) A person commits an offence if:
- (a) the person permits a ship to be taken to sea; and
 - (b) the ship is an Australian ship that is of 400 gross tonnage or above; and
 - (c) the person is the owner of the ship; and
 - (d) an air pollution prevention certificate is not in force for the ship.

Penalty: 100 penalty units.

- (3) If the ship was constructed before the commencement of this section, subsections (1) and (2) apply to the ship from the earlier of the following:
- (a) the first scheduled dry-docking of the ship after that commencement;
 - (b) 19 May 2008.

267ZZD Certificates to be carried on board Australian ships

A person commits an offence if:

- (a) the person is the owner of a ship; and
- (b) the ship is an Australian ship of 400 gross tonnage or above; and

- (c) an air pollution prevention certificate is in force for the ship;
and
- (d) the person fails to ensure that the certificate is carried on board the ship.

Penalty: 100 penalty units.

267ZZE Production of certificate

- (1) This section applies if application is made to an officer of Customs in respect of an Australian ship that is of 400 gross tonnage or above for a clearance under the Customs Act for a voyage from a port in Australia.
- (2) The officer of Customs may:
 - (a) require the master of the ship to produce to him or her an air pollution prevention certificate for the ship; and
 - (b) do either or both of the following until the requirement is complied with:
 - (i) refuse to grant the clearance;
 - (ii) detain the ship.

267ZZF Directions in relation to foreign ships

- (1) If the Authority considers that a foreign ship is not constructed in accordance with Annex VI, the Authority may give one or more of the following directions in relation to the ship:
 - (a) that the ship not enter any port, or one or more specified ports, in Australia;
 - (b) that the ship not use any off-shore terminal, or one or more specified off-shore terminals, in Australia;
 - (c) that the ship comply with specified requirements while it is entering, is in or is leaving any port, or is in one or more specified ports, in Australia;
 - (d) that the ship comply with specified requirements while it is approaching, using or leaving any off-shore terminal, or one or more specified off-shore terminals, in Australia.
- (2) A direction must:
 - (a) be given by written notice addressed to the master or the owner of the ship; and

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- (b) be served in accordance with the regulations.
- (3) A notice given under paragraph (2)(a) is not a legislative instrument.
- (4) For the purposes of subsection (1), it does not matter whether the ship is required by Annex VI to be constructed in accordance with that Annex.
- (5) The Authority may give a direction only to the extent that it appears to it necessary or expedient to do so to protect the environment.
- (6) If:
- (a) the master or owner of a ship is served with a notice under subsection (2); and
 - (b) the master or owner does not comply with any direction contained in that notice;
- the master and the owner each commit an offence.
- Penalty: 100 penalty units.
- (7) An offence under subsection (6) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (8) If:
- (a) the master or owner of a ship is served with a notice under subsection (2); and
 - (b) the master or owner does not comply with any direction contained in that notice; and
 - (c) the master or owner is reckless as to whether there is a failure to comply with that direction;
- the master and the owner each commit an offence.
- Penalty: 500 penalty units.
- (9) In proceedings for an offence against subsection (6) or (8) in relation to a failure to comply with a direction, it is a defence if it is proved:
- (a) that the failure to comply with the direction resulted from the need to save life at sea or was due to an emergency involving a threat to a person's life; or
 - (b) that compliance with the direction was not possible.

Note: A defendant bears a legal burden in relation to the matter in subsection (9) (see subsection 13.4 of the *Criminal Code*).

Division 12E—Pollution or damage to the marine environment

Subdivision A—Preliminary

267ZZG Interpretation

In this Division:

aggravated contravention has the meaning given by section 267ZZN.

Australia includes the external Territories.

Australian ship means:

- (a) a ship registered in Australia; or
- (b) an unregistered ship having Australian nationality.

coastal sea of Australia means:

- (a) the territorial sea of Australia; and
- (b) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or Territory.

Territory includes the external Territories.

Subdivision B—Ships causing pollution or damage to the Australian marine environment

267ZZH Application

- (1) Section 2 does not have effect in relation to this Subdivision.
- (2) This Subdivision applies to the operation of a ship in:
 - (a) the coastal sea of Australia; or
 - (b) the exclusive economic zone; or
 - (c) seas that are beyond the territorial sea and the exclusive economic zone of Australia.

Note: However, a master of a ship is only liable for an offence or civil penalty under this Subdivision if pollution or damage to the marine environment that occurs as a result of the master's operation of the

ship occurs in the coastal sea of Australia or the exclusive economic zone of Australia (see sections 267ZZI and 267ZZJ).

267ZZI Operating a ship in a manner that causes pollution or damage to the Australian marine environment

- (1) A master of a ship must not operate the ship in a manner that causes:
- (a) pollution to the marine environment in the coastal sea of Australia or the exclusive economic zone; or
 - (b) damage to the marine environment in the coastal sea of Australia or the exclusive economic zone.

Offence

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

Penalty: 600 penalty units.

- (3) The physical elements of the offence are set out in subsection (1).
- (4) Recklessness or negligence is the fault element for:
- (a) the operation of the ship in the manner that causes the result mentioned in paragraph (1)(a) or (b); and
 - (b) the result mentioned in paragraph (1)(a) or (b) occurring.
- (5) In determining the standard of care a reasonable person would exercise in operating the ship and whether there was a risk that a result mentioned in paragraph (1)(a) or (b) would happen, the matters to which the Court may have regard include, but are not limited to, the following:
- (a) the characteristics of the ship;
 - (b) the ship's cargo and the risks of pollution or damage to the marine environment if that cargo is released;
 - (c) the amount of bunker oil on board the ship and the risk of pollution or damage to the marine environment if that amount of oil is released;
 - (d) the state of visibility;
 - (e) the state of the wind, sea and current;
 - (f) the presence of other ships in the vicinity;
 - (g) the presence of navigation hazards in the vicinity;

- (h) the rules under the Prevention of Collisions Convention;
- (i) operational requirements imposed by law.

Civil penalty provision

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

Civil penalty:

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

267ZZJ Failure to ensure ship is operated in a manner that does not cause pollution or damage to the Australian marine environment

- (1) A master of a ship must ensure that the ship is operated in a manner that does not cause:
 - (a) pollution to the marine environment in the coastal sea of Australia or the exclusive economic zone; or
 - (b) damage to the marine environment in the coastal sea of Australia or the exclusive economic zone.

Offence

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

Penalty: 600 penalty units.

- (3) The physical elements for the offence are set out in subsection (1).
- (4) Recklessness or negligence is the fault element for:
 - (a) failure to ensure that the ship is operated in a manner that does not cause the result mentioned in paragraph (1)(a) or (b); and
 - (b) the result mentioned in paragraph (1)(a) or (b) occurring.
- (5) The matters to which the Court may have regard in determining the following include, but are not limited to, the matters set out in subsection (6):

- (a) the standard of care a reasonable person would exercise in ensuring that the ship is operated in a manner that does not cause the result mentioned in paragraphs (1)(a) and (b);
 - (b) whether there was a risk that the result mentioned in paragraph (1)(a) or (b) would happen.
- (6) Those matters are the following:
- (a) the characteristics of the ship;
 - (b) the ship's cargo and the risks of pollution or damage to the marine environment if that cargo is released;
 - (c) the amount of bunker oil on board the ship and the risk of pollution or damage to the marine environment if that amount of oil is released;
 - (d) the state of visibility;
 - (e) the state of the wind, sea and current;
 - (f) the presence of other ships in the vicinity;
 - (g) the presence of navigation hazards in the vicinity;
 - (h) the rules under the Prevention of Collisions Convention;
 - (i) operational requirements imposed by law.

Civil penalty provision

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

Civil penalty:

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

Subdivision C—Australian ships causing pollution or damage to the marine environment outside of Australia

267ZZK Application

- (1) Section 2 does not have effect in relation to this Subdivision.
- (2) This Subdivision applies to the operation of a ship in:
 - (a) the coastal sea of Australia; or
 - (b) the exclusive economic zone; or
 - (c) seas that are beyond the territorial sea and the exclusive economic zone of Australia.

267ZZL Operating a ship in a manner that causes pollution or damage to the marine environment outside of Australia

- (1) A master of an Australian ship must not operate the ship in a manner that causes:
- (a) pollution to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia; or
 - (b) damage to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia.

Offence

- (2) A master commits an offence if the master contravenes subsection (1).
- Penalty: 600 penalty units.
- (3) The physical elements of the offence are set out in subsection (1).
- (4) Recklessness or negligence is the fault element for:
- (a) the operation of the ship in the manner that causes the result mentioned in paragraph (1)(a) or (b); and
 - (b) the result mentioned in paragraph (1)(a) or (b) occurring.
- (5) In determining the standard of care a reasonable person would exercise in operating the ship and whether there was a risk that a result mentioned in paragraph (1)(a) or (b) would happen, the matters to which the Court may have regard include, but are not limited to, the following:
- (a) the characteristics of the ship;
 - (b) the ship's cargo and the risks of pollution or damage to the marine environment if that cargo is released;
 - (c) the amount of bunker oil on board the ship and the risk of pollution or damage to the marine environment if that amount of oil is released;
 - (d) the state of visibility;
 - (e) the state of the wind, sea and current;
 - (f) the presence of other ships in the vicinity;
 - (g) the presence of navigation hazards in the vicinity;
 - (h) the rules under the Prevention of Collisions Convention;

- (i) operational requirements imposed by law.

Civil penalty provision

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

Civil penalty:

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

267ZZM Failure to ensure ship is operated in a manner that does not cause pollution or damage to the marine environment outside of Australia

- (1) A master of an Australian ship must ensure that the ship is operated in a manner that does not cause:
 - (a) pollution to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia; or
 - (b) damage to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia.

Offence

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

Penalty: 600 penalty units.

- (3) The physical elements for the offence are set out in subsection (1).
- (4) Recklessness or negligence is the fault element for:
 - (a) failure to ensure that the ship is operated in a manner that does not cause the result mentioned in paragraph (1)(a) or (b); and
 - (b) the result mentioned in paragraph (1)(a) or (b) occurring.
- (5) The matters to which the Court may have regard in determining the following include, but are not limited to, the matters set out in subsection (6):

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- (a) the standard of care a reasonable person would exercise in ensuring that the ship is operated in a manner that does not cause the result mentioned in paragraphs (1)(a) and (b);
 - (b) the risk that the result mentioned in paragraph (1)(a) or (b) would happen.
- (6) Those matters are the following:
- (a) the characteristics of the ship;
 - (b) the ship's cargo and the risks of pollution or damage to the marine environment if that cargo is released;
 - (c) the amount of bunker oil on board the ship and the risk of pollution or damage to the marine environment if that amount of oil is released;
 - (d) the state of visibility;
 - (e) the state of the wind, sea and current;
 - (f) the presence of other ships in the vicinity;
 - (g) the presence of navigation hazards in the vicinity;
 - (h) the rules under the Prevention of Collisions Convention;
 - (i) operational requirements imposed by law.

Civil penalty provision

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

Civil penalty:

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

Subdivision D—Aggravated contraventions of civil penalty provisions

267ZZN Aggravated contraventions of civil penalty provisions

- (1) A contravention of a civil penalty provision of this Division by a person is an ***aggravated contravention*** if the conduct the person engaged in that constituted the contravention:
- (a) resulted in serious harm to the marine environment; or
 - (b) had the potential to cause serious harm to the marine environment.

- (2) In determining whether conduct has resulted in serious harm to the marine environment, the Court may have regard to the following:
- (a) the harm;
 - (b) the size of the affected environment;
 - (c) the sensitivity of the affected environment;
 - (d) the significance of the affected environment;
 - (e) whether the harm is irreversible;
 - (f) the measures required to remedy the harm.
- (3) In determining whether conduct had the potential to cause serious harm to the marine environment, the Court may have regard to the following:
- (a) the potential harm;
 - (b) the size of the potentially affected environment;
 - (c) the sensitivity of the potentially affected environment;
 - (d) the significance of the potentially affected environment;
 - (e) whether the harm would have been irreversible, had it occurred;
 - (f) the measures that would have been required to remedy the harm, had it occurred.
- (4) If the Authority intends to prove that the person has committed an aggravated contravention, the Authority's application for a civil penalty order in relation to the contravention must specify the relevant aggravated contravention.
- (5) If, in proceedings for a civil penalty order in relation to an aggravated contravention of a provision of this Division, the Court:
- (a) is not satisfied that the person has committed an aggravated contravention against that provision; and
 - (b) is satisfied beyond reasonable doubt that the person has contravened that provision;
- the Court may make a civil penalty order against the person not for the aggravated contravention but for the contravention of that provision.

Division 13—Report of accidents and of dangers to navigation

268 Accidents etc. to be reported

- (1) This section applies to a ship if:
- (a) it is a ship to which Part II applies; or
 - (b) it is either within Australia or on a voyage to a port in Australia.
- (1A) If the ship has sustained or caused an accident occasioning loss of life or serious injury to a person, the master of the ship must:
- (a) as soon as practicable, having regard to the means of communication available to him or her, report the accident to such member of staff of the Authority as is prescribed; and
 - (b) within such time as the member of staff specifies, give a written report to the member in a form required by subsection (1E) in relation to the accident.

Penalty: 500 penalty units.

- (1B) If:
- (a) the ship has sustained an accident or has otherwise received damage, or a defect in the ship or its boilers, machinery or equipment has been discovered; and
 - (b) the accident, damage or defect has affected, or is likely to affect:
 - (i) the seaworthiness or safety of the ship; or
 - (ii) the efficient operation or the safety of the boilers, machinery or fixed equipment of the ship; or
 - (iii) the efficiency or completeness of the life-saving appliances or other safety equipment of the ship;
- the master of the ship must:
- (c) as soon as practicable, having regard to the means of communication available to him or her, report the accident, damage or defect to such member of staff of the Authority as is prescribed; and

- (d) within such time as the member of staff specifies, give a written report to the member in a form required by subsection (1E) in relation to the accident, damage or defect.

Penalty: 200 penalty units.

(1C) If the ship:

- (a) has been in a position of great peril, either from the action of some other ship or from danger of wreck or collision; or
- (b) has been stranded or wrecked; or
- (c) has fouled or done any damage to a pipeline or submarine cable or to a lighthouse, lightship, beacon, buoy or other marine mark, except a lighthouse, lightship, beacon, buoy or marine mark to which section 19B of the *Lighthouses Act 1911* applies;

the master of the ship must:

- (d) as soon as practicable, having regard to the means of communication available to him or her, report the event to such member of staff of the Authority as is prescribed; and
- (e) within such time as the member of staff specifies, give a written report to the member in a form required by subsection (1E) in relation to the event.

Penalty: 200 penalty units.

(1D) If the ship:

- (a) has left a port in Australia; and
- (b) for reasons of repair or maintenance that might affect the seaworthiness or safety of the ship, later puts back to that port or navigates to another port in Australia;

the master of the ship must:

- (c) as soon as practicable, having regard to the means of communication available to him or her, report the event to such member of staff of the Authority as is prescribed; and
- (d) within such time as the member of staff specifies, give a written report to the member in a form required by subsection (1E) in relation to the event.

Penalty: 20 penalty units.

- (1E) A written report relating to an accident referred to in subsection (1A), an accident, damage or defect referred to in

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subsection (1B) or an event referred to in subsection (1C) or (1D) is in a form required by this subsection if it includes:

- (a) such particulars of the accident, damage, defect or event and of the time, place and circumstances of its occurrence as are prescribed; and
- (b) such particulars of the ship, its owner and its crew as are prescribed; and
- (c) such particulars of the voyage during which the accident, damage, defect or event occurred as are prescribed.

(2) In this section:

fixed equipment means equipment included in a class of equipment specified in the regulations as fixed equipment for the purposes of this section.

safety equipment means equipment included in a class of equipment specified in the regulations as safety equipment for the purposes of this section.

269 Notification of loss of ships

If:

- (a) the owner or agent of a ship to which Part II applies has reason to believe that the ship has been wholly lost; or
- (b) the owner or agent of any other ship has reason to believe that the ship has been wholly lost on or near the coast of Australia;

the owner or agent shall forthwith give notice in writing to the Authority that he or she believes the ship to be lost and shall state, to the best of his or her knowledge, the probable cause of the loss.

Penalty: 50 penalty units.

269A Report of dangers to navigation

- (1) The master of a ship to which Part II applies commits an offence if:
 - (a) the master meets with, or is informed of, any serious danger to navigation on or near his or her course; and
 - (b) the master does not, at the earliest practicable time:
 - (i) send out to ships in the vicinity, by all means of communication at his or her disposal, the prescribed

safety signal, followed by a message (the *danger message*) conveying such information as is prescribed; and

- (ii) make a report to shore to such a person, and in such a manner, as is prescribed.

Penalty: 200 penalty units.

- (2) The reference in subsection (1) to a serious danger to navigation includes, but is not limited to, any of the following:
 - (a) dangerous ice;
 - (b) a dangerous derelict;
 - (c) a tropical storm;
 - (d) sub-freezing air temperature associated with gale force winds causing severe ice accretion on superstructures;
 - (e) winds of force 10 on the Beaufort scale for which no storm warning has been received.
- (3) Subsection (1) does not apply where compliance with that subsection would interfere with the transmission of a signal of distress.
- (4) The transmission, under this section, of danger messages respecting ice, derelicts or other dangers to navigation is to be free of cost to the ships concerned.

Division 14—Report of movement of ships

269B Definitions

In this Division, unless the contrary intention appears:

Australia includes the external Territories.

Australian ship means a ship to which Part II applies.

prescribed area, in relation to any reporting matter or matters, means an area of sea around Australia, that comprises so much of:

- (a) the area for which Australia has responsibility for search and rescue; and
- (b) any area of the sea beyond the outer limits of the area referred to in paragraph (a) that is an area in respect of which Australia is required or permitted, under an international treaty, to obtain reports relating to the movement, or intended movement, of ships;

as is prescribed for the purposes of this Division in relation to that matter or those matters.

reporting matter means any matter relating to the movement, or intended movement, of ships, including any such matter that is referred to under an international treaty by which rights are conferred or duties are imposed on Australia as a contracting party.

269C Objects of Division

The objects of this Division include the making of provisions with respect to the reporting of the movement or intended movement of ships so as to enable Australia:

- (a) to exercise rights conferred, or carry out the duties imposed, on Australia under customary international law or as a contracting party under international treaties that provide for:
 - (i) coast watching; and
 - (ii) the rescue of persons in distress at sea; and
 - (iii) the prevention, minimisation or reduction of pollution of the sea by ships or by activities associated with ships; and

- (iv) the safety of ships; and
 - (v) the safeguarding of ships against any unlawful interference with maritime transport; and
 - (vi) any other matter in respect of which a right is conferred, or a duty imposed, on Australia; and
- (b) to establish reporting requirements for Australian ships.

269D Regulations relating to reporting requirements

- (1) The regulations may make provision for, and in relation to, the reporting requirements:
- (a) of all ships (other than Australian ships) that are in, or in the process of entering or leaving, the prescribed area in relation to a reporting matter; and
 - (b) of all Australian ships wherever located.
- (2) Without limiting the generality of subsection (1), such regulations may provide for:
- (a) the form and content of sailing plans for ships (other than Australian ships) proposing to leave a port in Australia bound for another port in Australia or a port outside Australia; and
 - (b) the form and content of sailing plans for Australian ships proposing to leave any port (including a port outside Australia) bound for another port (including another port outside Australia); and
 - (c) the form and content of reports on the movement of ships (other than Australian ships) entering, traversing or leaving the prescribed area in relation to a reporting matter, including reports on their position, course and speed and such other matters as the regulations prescribe; and
 - (d) the form and content of reports on the movement of Australian ships including reports on their position, course and speed and such other matters as the regulations prescribe; and
 - (e) the requirement to notify the cancellation of sailing plans and to furnish additional movement reports if a ship deviates, by more than a prescribed amount, from a previously indicated course; and
 - (f) the time at which and manner in which sailing plans, movement reports and cancellation of sailing plans are to be notified to the Authority; and

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- (g) the full or partial exemption of ships from all or any of the requirements of regulations in force under this section.
- (3) The regulations may prescribe different reporting requirements:
 - (a) for prescribed areas in relation to different reporting matters; or
 - (b) for different classes of ship (other than Australian ships) that are within, or entering or leaving, a prescribed area in relation to a particular reporting matter; or
 - (c) for different classes of Australian ship.

269E Offence for failure to report in accordance with regulations

- (1) The master of a ship commits an offence if:
 - (a) the master is required to make a report under the regulations made for the purposes of a provision of this Part; and
 - (b) the master does not make the report in accordance with the regulations.

Penalty: 240 penalty units.

- (2) Subsection (1) is an offence of strict liability.

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

Part V—Passengers

270 Regulations as to passenger trade

The Regulations may, in regard to ships to which Part II applies, prescribe any matters or things necessary or convenient for regulating the carriage of passengers generally, and in particular in regard to:

- (a) equipment;
- (b) conveyance of stock;
- (c) number of passengers to be carried and their accommodation;
- (d) provisions, water, medical and surgical stores, and medical inspection;
- (e) medical staff and attendants;
- (ea) hospital accommodation;
- (f) sanitary matters;
- (g) discipline;
- (h) sale of spirits;
- (i) passenger lists;
- (j) cargo to be carried and the method of stowing cargo.

272 Provision for passengers wrecked

If:

- (a) any ship carrying passengers is wrecked, or is disabled and unable to proceed on its voyage within a reasonable time, whilst on its voyage from one port to another in Australia; or
- (b) any ship carrying passengers coming from any port outside Australia is wrecked on the coast of Australia;

the owner or master shall cause the passengers to be taken on to their destination, and shall defray their maintenance until so taken on:

Provided that, if any passenger is tendered and accepts the return of the passage money paid by the passenger, such liability shall cease.

273 Assurances in connection with passages

A policy of assurance effected in respect of any passage, or of any passage or compensation money by any person by this Part made liable, in the events aforesaid, to provide such passage or to pay such money, or in respect of any other risk under this Part, shall not be invalid by reason of the nature of the risk or interest sought to be covered by the policy of assurance.

274 Responsibility of owner to other persons

- (1) In the absence of any agreement to the contrary, the owner of a ship shall be the person ultimately responsible, as between himself or herself and the other persons by this Part made liable, in respect of any default in complying with any requirement thereof.
- (2) If any person so made liable pays any money by this Part made payable to or on behalf of a passenger, or is mulct in a penalty for an offence arising out of a failure on the part of the owner to comply with the requirements of this Part, that person shall be entitled, in the absence of any agreement as aforesaid, to sue for and recover from the owner the amount so paid, together with costs.

275 Passenger landed elsewhere than at destination

- (1) The master or owner of a ship commits an offence if:
 - (a) the master or owner engages in conduct; and
 - (b) the conduct results in a passenger on the ship being landed from the ship at a port other than the port at which the passenger contracted to land.

Penalty: \$1,000.

- (2) Subsection (1) does not apply if:
 - (a) the passenger consents to being landed from the ship as mentioned in paragraph (1)(b); or
 - (b) it is an unavoidable necessity that the passenger be landed as mentioned in paragraph (1)(b).

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

276 Right of action by passenger

Nothing in this Part shall take away or abridge any right of action which may accrue to a passenger in any ship, or to any other person, in respect of the breach or non-performance of any contract made between or on behalf of the passenger or other person and the master, charterer, or owner of the ship, or his or her agent.

278 Obstructing ship or machinery

- (1) A passenger or other person on board a ship must not do an act that results in:
- (a) the obstruction of any part of the machinery or equipment of the ship; or
 - (b) the obstruction or molestation of the master or crew of the ship in the execution of their duty.

Penalty: \$1,000.

- (2) The master or other officer of any ship, and all persons called by such person to his or her assistance, may, without any warrant, detain any person who commits any offence against this section, and whose name and address are unknown to the master or officer, and convey the offender with all convenient despatch before a Court of summary jurisdiction to be dealt with according to law.
- (3) If any person commits an offence against subsection (1), he or she shall, on demand by any person in the employ of the owner of the ship, give his or her true name and address.
- (4) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (3) to give his or her true name and address; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes the requirement.

Penalty: \$500.

279 Power to exclude certain persons

- (1) The master of any ship may refuse to receive on board thereof any person who, by reason of drunkenness or otherwise, is in such a state, or misconducts himself or herself in such a manner, as to

cause annoyance or injury to passengers on board; and, if any such person is on board, the master may after tendering to the person the amount of his or her fare (if that person has paid it) less a proper deduction in respect of the distance (if any) he or she has been conveyed from the port of embarkation, put the person ashore at any one of the principal ports in Australia (as defined in the regulations).

- (2) The master of any ship may refuse to receive on board thereof any person who appears to be suffering from any disease likely to endanger the health or safety of those on board.

280 Taking passage for lunatic, or sending lunatic on board

- (1) No person shall engage or pay for a passage, on any ship, for a lunatic, or bring or send a lunatic on board ship as a passenger, without informing the owner, master, or agent of the ship that the person is a lunatic.

Penalty: \$500.

- (2) For the purposes of this section, *lunatic* includes any person of unsound mind, and any person who, to the knowledge of the person charged with a contravention of this section, is liable to become a lunatic or person of unsound mind.

281 Offences on ships by disorderly persons

No person shall:

- (a) enter a ship after being refused admission thereto by the owner, or any person in the employ of the owner, on account of that person's being drunk, or disorderly, or on account of his or her suffering from disease, or for other proper reason, and after the amount of that person's fare (if he or she has paid it) has been tendered to him or her; or
- (b) fail to quit a ship upon being ordered by the master in pursuance of section 279 to do so, and upon tender of his or her fare, or part thereof, as provided in that section; or
- (c) molest any passenger on a ship.

Penalty: \$500.

282 Offences by passengers

- (1) No person shall:
- (a) enter a ship after having been refused admission thereto by the owner, or any person in the employ of the owner, on account of the ship being full, and after the amount of that person's fare (if he or she has paid it) has been tendered to him or her; or
 - (b) fail to quit a ship forthwith, after being ordered to do so by master or any officer, on account of the ship being full, before it has left the place at which that person went on board and after having the amount of his or her fare (if he or she has paid it) returned or tendered to him or her; or
 - (c) travel in a ship without first paying his or her fare, and with intent to avoid payment thereof; or
 - (d) having paid his or her fare for a certain distance, proceed in the ship beyond that distance without first paying the additional fare for the additional distance, and with intent to avoid payment thereof; or
 - (e) fail to quit the ship at the place to which that person has paid his or her fare; or
 - (f) fail, when requested by an officer of the ship to do so, either to pay his or her fare or exhibit that ticket or receipt, if any, showing the payment of his or her fare; or
 - (g) not being a passenger or a member of the crew, fail to quit any ship when requested by any officer thereof.

Penalty: \$500.

- (2) The penalty under this section shall not prejudice the recovery of any fare payable by the offender.

Part VA—Special purpose ships and special personnel

283 Interpretation

In this Part:

special purpose ship means a ship specified in the regulations as a special purpose ship or a ship included in a class of ships specified in the regulations as special purpose ships.

special personnel means persons carried on board a special purpose ship with the knowledge or consent of the owner, agent or master of the ship, other than:

- (a) the master or any other member of the crew of the ship;
- (b) a pilot;
- (c) a person temporarily employed on the ship in port; or
- (d) any person included in a class of persons prescribed for the purposes of this paragraph.

283A Power to make regulations

- (1) The regulations may make provision for or in relation to special purpose ships or special personnel with respect to any matter with respect to which provision is made by this Act or may be made by regulations made otherwise than by virtue of this section.
- (2) The regulations may provide that a specified provision of this Act does not apply, or applies with prescribed modifications, in relation to special purpose ships or special personnel.

283B Special personnel not passengers

For the purposes of this Act, persons who are special personnel carried on board a special purpose ship shall, except where the contrary intention appears, be deemed not to be passengers on that ship.

Part VB—Off-shore industry vessels and off-shore industry mobile units

283C Extension to prescribed Territories

- (1) This Part extends to every external Territory prescribed for the purposes of section 8.
- (2) In subsection (1), *this Part* includes the regulations made by virtue of this Part and the orders made in pursuance of those regulations.

283D Regulations with respect to off-shore industry vessels

- (1) The regulations may make provision:
 - (a) for or in relation to giving effect to resolutions of the International Maritime Organization with respect to off-shore industry vessels or classes of off-shore industry vessels; and
 - (b) in relation to off-shore industry vessels with respect to any matter with respect to which provision is made by this Act or may be made by regulations made otherwise than by virtue of this section.
- (2) The regulations may provide that a specified provision of this Act does not apply, or applies with prescribed modifications, in relation to off-shore industry vessels or a class of off-shore industry vessels.
- (5) Nothing in this section shall be taken to authorize the making of regulations affecting the operation of section 2, 8 or 8A.

283E Regulations with respect to off-shore industry mobile units

- (1) The regulations may make provision:
 - (a) for or in relation to giving effect to resolutions of the International Maritime Organization with respect to off-shore industry mobile units or classes of off-shore industry mobile units;
 - (b) in relation to off-shore industry mobile units with respect to any matter with respect to which provision is made by this
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Act or may be made by regulations made otherwise than by virtue of this section; and

- (c) for or in relation to any of the following matters, namely:
- (i) the inspection and survey of off-shore industry mobile units, and the issue of survey certificates in respect of such units;
 - (ii) the construction, hull, equipment and machinery of off-shore industry mobile units;
 - (iii) the stability of off-shore industry mobile units;
 - (iv) accommodation on off-shore industry mobile units;
 - (v) safety in relation to off-shore industry mobile units, including life-saving equipment and appliances to be carried on such units;
 - (vi) the prevention, detection and extinction of fire on off-shore industry mobile units;
 - (vii) the prevention of collisions involving off-shore industry mobile units;
 - (viii) the navigation (including towing) of off-shore industry mobile units;
 - (ix) the equipping of off-shore industry mobile units with radio installations and operation, maintenance and use on off-shore industry mobile units of radio installations;
 - (x) the manning of off-shore industry mobile units;
 - (xi) the securing to the seabed of off-shore industry mobile units engaged in drilling, laying pipelines or other operations;
 - (xii) the providing of off-shore industry vessels for use in association with off-shore industry mobile units;
 - (xiii) the transfer of persons and goods to or from off-shore industry mobile units, including the provision, maintenance and use of cranes and other lifting devices and equipment and helicopter landing facilities;
 - (xiv) the prevention of pollution, or other damage to the environment, by off-shore industry mobile units;
 - (xv) the carrying of an operating manual by off-shore industry mobile units;
 - (xvi) the carriage of dangerous goods on off-shore industry mobile units; and

- (xvii) the granting of exemptions, whether conditionally or unconditionally, to off-shore industry mobile units from any requirement of this Act.
- (2) The regulations may provide that a specified provision of this Act does not apply, or applies with prescribed modifications, in relation to off-shore industry mobile units or a class of off-shore industry mobile units.
- (5) Section 2 does not have effect in relation to regulations made by virtue of this section, or in relation to orders made by virtue of such regulations, that make provision for or in relation to the providing of off-shore industry vessels for use in association with off-shore industry mobile units.

283F Directions with respect to off-shore industry mobile units

- (1) The Authority may, by notice in writing served on the master or owner of an off-shore industry mobile unit, give directions with respect to any matter for or in relation to which provision may be made by the regulations by virtue of section 283E.
- (2) Directions given under subsection (1) do not have effect to the extent that they are inconsistent with regulations made by virtue of section 283E or orders made under subsection 425(1AA).
- (3) The master and owner of an off-shore industry mobile unit each commit an offence if:
 - (a) the Authority gives a direction to the master or owner under subsection (1); and
 - (b) that direction is not complied with.

Penalty: 60 penalty units.

- (4) An offence under subsection (3) is an offence of strict liability.

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

283G Off-shore industry vessels and mobile units not registered in Australia deemed to be registered in Australia

- (1) Subject to subsection (2) and except where the contrary intention appears, the provisions of this Act apply in relation to an off-shore industry vessel, or an off-shore industry mobile unit, that is not

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registered in Australia as if it were registered in Australia and were not registered in any other country.

- (2) The Authority may, by instrument in writing, direct that, in relation to an off-shore industry vessel, an off-shore industry mobile unit, a class of off-shore industry vessels or a class of off-shore industry mobile units specified in the direction, subsection (1) does not have effect or does not have effect in respect of a provision or provisions of this Act specified in the direction.
- (3) A direction under subsection (2):
 - (a) is subject to such conditions (if any) as are specified in the direction; and
 - (b) may be confined to a particular period or to one or more particular voyages or operations.
- (4) The master and owner of an off-shore industry vessel or an off-shore industry mobile unit that is not registered in Australia each commit an offence if:
 - (a) the Authority gives a direction to the master or owner of the off-shore industry vessel or off-shore industry mobile unit, under subsection (2), in respect of:
 - (i) the off-shore industry vessel or off-shore industry mobile unit; or
 - (ii) a class of off-shore industry vessels or off-shore industry mobile units that includes the off-shore industry vessel or off-shore industry mobile unit; and
 - (b) the direction is expressed to be subject to a condition; and
 - (c) that condition is contravened or not complied with.

Penalty: 60 penalty units.

- (5) An offence under subsection (4) is an offence of strict liability.

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

283H Personnel of off-shore industry vessels and mobile units not passengers

- (1) For the purposes of this Act, personnel carried on board an off-shore industry vessel or off-shore industry mobile unit shall, except where the contrary intention appears, be deemed not to be passengers on that ship.

- (2) In subsection (1), *personnel* means persons carried on board an off-shore industry vessel or off-shore industry mobile unit with the knowledge or consent of the owner, agent or master of the ship, other than:
- (a) the master or any other member of the crew of the ship;
 - (b) a pilot;
 - (c) a person temporarily employed on the ship in port; or
 - (d) any person included in a class of persons prescribed for the purposes of this paragraph.

283J Notices by Minister as to International Maritime Organization resolutions

- (1) The Minister may, by notice published in the *Gazette*, set out the terms of a resolution of the International Maritime Organization with respect to:
- (a) off-shore industry vessels or a class or classes of off-shore industry vessels; or
 - (b) off-shore industry mobile units or a class or classes of off-shore industry mobile units.
- (2) A notice in the *Gazette* purporting to be published under subsection (1) is, for all purposes, *prima facie* evidence of the matters declared in the notice.

283K Regulations, orders and directions inconsistent with *Offshore Petroleum and Greenhouse Gas Storage Act 2006* etc.

- (1) Regulations made by virtue of sections 283D and 283E, orders made under subsection 425(1AA) and directions given under section 283F do not have effect to the extent that they are inconsistent with the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (including regulations made under that Act and directions given under section 305 of that Act, but not including the provisions of the laws of the States and the Northern Territory applied by that Act) or with the Petroleum (Submerged Lands) Act of a State or the Northern Territory (including regulations made, and directions given, under such an Act, but not including the provisions of other laws of the State or Territory, as the case may be, applied by such an Act).

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- (2) The reference in subsection (1) to the Petroleum (Submerged Lands) Act of a State or the Northern Territory shall be construed as a reference to the Act of the State or the Territory, as the case may be, relating to the exploration for, and the exploitation of, the petroleum resources of submerged land adjacent to the coast of that State or Territory.

Part VII—Wrecks and salvage

Division 1—Interpretation

294 Interpretation

- (1) In this Part, unless the context otherwise requires:

common understanding concerning Articles 13 and 14 of the Salvage Convention means the common understanding:

- (a) that is referred to in section 315; and
- (b) the terms of which are set out in Part B of Schedule 9.

damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.

historic wreck means:

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

natural resources means the mineral and non-living resources of the seabed and its subsoil.

Organization means the International Maritime Organization.

payment means any reward, remuneration or compensation due under Division 3.

property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.

receiver means the Authority or a person appointed by the Authority to be a receiver of wreck in any assigned district.

Salvage Convention means the International Convention on Salvage, 1989, as set out in Part A of Schedule 9 to this Act.

salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.

Secretary-General means the Secretary-General of the Organization.

tidal water means a part of the sea, or a part of a river within the ebb and flow of the tide at ordinary spring tides, but does not include a harbour.

vessel means any ship or craft, or any structure capable of navigation.

wreck includes jetsam, flotsam, lagan, and derelict found in or on the shores of the sea or any tidal water, and any articles or goods of whatever kind which belonged to or came from any ship wrecked, stranded, or in distress, or any portion of the hull machinery or equipment of any such ship.

- (2) A reference in this Part to Division 3 includes a reference to the provision having the force of law under section 315.

295 Powers of Customs reserved

The operation of this Part shall in no way derogate from or interfere with the powers of the Customs conferred by any Act.

295A Certain provisions of Part not applicable to historic wrecks

- (1) The provisions of sections 302 to 312 (inclusive), section 314 and Division 3 do not apply in relation to a wreck that is a historic wreck.
- (2) Where the provisions referred to in subsection (1) (in this subsection referred to as the *relevant provisions*) cease to apply in relation to a wreck by reason that it becomes a historic wreck, subsection 7(2) of the *Acts Interpretation Act 1901* has effect, subject to the *Historic Shipwrecks Act 1976*, in respect of any previous application of the relevant provisions in relation to that wreck as if the relevant provisions had been repealed by an Act with effect from the date on which they so cease to apply, but nothing in this subsection precludes the relevant provisions from

again applying in relation to that wreck if it subsequently ceases to be a historic wreck.

295B Certain provisions of Part not applicable to certain wrecks

- (1) The provisions of sections 302 to 312 (inclusive), section 314 and Division 3 do not apply in relation to a wreck:
 - (a) that is a historic shipwreck or historic relic within the meaning of a law of a State or of the Northern Territory that relates to shipwrecks or relics of historic significance; and
 - (b) in relation to which the provisions of that law apply.
- (2) Where the provisions referred to in subsection (1) (in this subsection referred to as the *relevant provisions*) cease to apply in relation to a wreck to which subsection (1) applies, subsection 7(2) of the *Acts Interpretation Act 1901* has effect in respect of any previous application of the relevant provisions in relation to that wreck as if the relevant provisions had been repealed by an Act with effect from the date on which they so ceased to apply, but nothing in this subsection precludes the relevant provisions from again applying in relation to that wreck if it subsequently ceases to be a wreck to which subsection (1) applies.

Division 2—Wreck

296 Receiver where ship in distress

- (1) Where any ship is wrecked, stranded, or in distress at any place on or near the coasts of Australia or any tidal water within Australia, the receiver for the district shall proceed thither, and upon arrival shall take the command of all persons present, and give such directions to each person as the receiver thinks fit for the preservation of the ship, and of the lives of the persons belonging to the ship (in this Part referred to as shipwrecked persons), and of the wreck:

Provided that the receiver shall not interfere between the master and the crew of the ship in reference to the management thereof, unless requested to do so by the master.

- (2) No person shall disobey the directions of the receiver.

Penalty for a contravention of this subsection: \$500.

297 Powers of receiver to require assistance

- (1) The receiver may, with a view to the preservation of shipwrecked persons or of the wreck:
- (a) require such persons as he or she thinks necessary to assist the receiver;
 - (b) require the master of any ship near at hand to give such aid with his or her men or ship as is in the master's power;
 - (c) require the use of any vehicle or draught animal that is near at hand.

- (2) No person shall refuse to comply with any such requisition.

Penalty: \$500.

- (3) Subsection (2) does not apply if the person has reasonable cause.

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

298 Power to pass over private land to assist at wreck

- (1) Whenever a ship is wrecked, stranded, or in distress, all persons may, for the purpose of rendering assistance to the ship, or of saving the lives of the shipwrecked persons, or of saving the wreck, unless there is some public road equally convenient, freely pass and repass, either with or without vehicles or draught animals, over any lands, but doing as little damage as possible, and may also, on the like condition, deposit any wreck on any lands.
- (2) Any damage occasioned by the exercise of the rights given by this section shall be a charge on the wreck in respect of or by which the damage is occasioned, and the amount of compensation payable for such damage shall be determined and be recoverable in the same manner as if it were salvage.
- (2A) A charge that arises under subsection (2) has priority over any PPSA security interest in the ship.
- (2B) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to a charge that arises under subsection (2).
 - Note 1: The effect of subsection (2B) is that the priority between a charge that arises under subsection (2) and a PPSA security interest is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.
 - Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to charges that arise under subsection (2) that arise after the commencement of subsection (2B) of this section (which commences at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).
- (3) A person commits an offence if the person engages in conduct, and the conduct results in:
 - (a) the impeding of any person in the exercise of the rights given by this section; or
 - (b) the impeding of the deposit of any wreck on the land; or
 - (c) the prevention of any wreck from remaining so deposited until it can be removed to a safe place.

Penalty: \$500.

299 Power of receiver to suppress plunder and disorder by force

- (1) Whenever a ship is wrecked, stranded, or in distress and any person plunders, creates disorder, or obstructs the preservation of the ship, or of the shipwrecked persons or of the wreck, the receiver may cause that person to be apprehended.
- (2) The receiver may use force for the suppression of any such plundering, disorder, or obstruction, and may command all persons present to assist him or her in so doing.
- (3) If any person is killed, maimed, or hurt, by reason of his or her resisting the receiver or any person acting under the receiver's orders in the execution of his or her duty, neither of the latter shall be liable to any punishment or to pay any damages by reason of the person being so killed, maimed, or hurt.

300 Exercise of powers when receiver absent

- (1) Where a receiver is not present, the following persons in succession (each in the absence of the other, in the order in which they are named) namely, an officer of Customs or an officer of police, may do anything authorized to be done by the receiver.
- (2) Any person so acting for a receiver shall with respect to any wreck be considered as the agent of the receiver, and shall place the wreck in his or her custody, but shall not be deprived, by reason of that person so acting, of any right to salvage to which he or she would otherwise be entitled.

301 Examination on oath as to wrecks

- (1) Where any ship is or has been wrecked, stranded, or in distress within the limits of Australia, a receiver, or in the absence of the receiver a collector or a justice, shall examine on oath any person who is able to give any account thereof as to the following matters (that is to say):
 - (a) the name and description of the ship;
 - (b) the name of the master and of the owners;
 - (c) the names of the owners of the cargo;
 - (d) the ports from and to which the ship was bound;

- (e) the occasion of the wrecking, stranding, or distress of the ship;
 - (f) the services rendered; and
 - (g) such other matters or circumstances relating to the ship, or to the cargo on board, as the person holding the examination thinks necessary.
- (2) The person holding the examination shall cause the evidence given at the examination to be taken down in writing and shall send a copy of the evidence so taken down to the Authority.
- (3) The person holding the examination shall, for the purposes thereof, have all the powers of the Authority under this Act.

302 Finding or taking possession of wreck

Where any person:

- (a) finds or takes possession of any wreck within the limits of Australia, or
- (b) having found or taken into possession any wreck outside Australia, subsequently brings it within the limits of Australia;

that person shall give notice to the receiver, stating that he or she has found or taken possession of the wreck, and describing the marks by which it may be recognized.

Penalty: \$1,000.

303 Penalty for retaining possession of wreck

- (1) No person, other than the owner thereof, shall keep possession of any wreck, or fail on demand to deliver it to the receiver or to any person authorized by the receiver to demand it.

Penalty: \$1,000.

- (2) The receiver, or any person authorized by the receiver, may take any such wreck by force from any person refusing to deliver it.

304 Notice to be posted in Customs-house

Where a receiver takes possession of any wreck, he or she shall within 48 hours cause to be posted in the nearest Customs-house a description thereof, and of any distinguishing marks.

305 Claim of owner to wreck

- (1) The owner of any wreck in the possession of the receiver, upon establishing his or her claim thereto to the satisfaction of the receiver within one year from the time at which the wreck came into his or her possession, shall, upon paying the salvage, fees, and expenses due, be entitled to have the wreck or the proceeds thereof delivered up to him or her.
- (2) Where any wreck from a ship to which Part II does not apply, which has been wrecked on or near the coasts of Australia, is found on or near those coasts, or is brought into any port in Australia, the consul of the country to which the ship or in the case of cargo to which the owner thereof belongs, shall, in the absence of the owner and of any agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of the goods.

306 Sale of wreck by receiver

- (1) A receiver may at any time sell any wreck in his or her custody, if in the receiver's opinion it is:
 - (a) under the value of \$40; or
 - (b) of such condition or nature that it should not be kept; or
 - (c) not of sufficient value to pay for keeping.
- (2) The proceeds of the sale shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights, and liabilities as if the wreck had remained unsold.

307 Expenses connected with wreck

In regard to expenses connected with any wreck, the following provisions shall apply:

- (a) All expenses properly incurred by any receiver in the execution of his or her duty shall be recoverable in a

summary manner from the owner of the ship or wreck in respect of which any services were performed;

- (b) The receiver shall, in addition to all other rights and remedies for the recovery of those expenses, have the same rights and remedies in respect thereof as a salvor has in respect of salvage;
- (c) If any dispute arises in regard to any such expenses, it shall be determined by the Minister, whose decision shall be final.

308 Right of Commonwealth

The Commonwealth shall be entitled to all unclaimed wreck found in Australia.

309 Sale of unclaimed wreck by receiver

Where no owner establishes a claim to any wreck, found in or brought into Australia and in the possession of a receiver, within one year after it came into the receiver's possession, the receiver shall sell it and shall pay the proceeds of the sale (after deducting therefrom the expenses of the sale and any other expenses incurred by the receiver, and paying thereout to the salvors such amount of salvage as the Minister directs or as is prescribed) to the Commonwealth.

310 Discharge of receiver from liability

Upon compliance with the provisions of this Part the receiver shall be discharged from all liability, but such discharge shall not prejudice or affect any question which may be raised by third parties concerning the right or title to any wreck.

311 Disputes as to title to wreck

- (1) Where a dispute arises as to the title to any wreck, it may be determined in the same manner as if it were a dispute as to salvage.
- (2) If any party to the dispute is unwilling to have it so determined, that party may proceed, in any Court of competent jurisdiction, to establish his or her title.

312 Taking wreck out of Australia

Every person who takes into any place out of Australia any ship stranded, derelict, or otherwise in distress, or any wreck found on or near the coasts of Australia, and there sells it, shall be guilty of an offence punishable on conviction by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

313 Boarding ship in distress without authority

- (1) No person shall board any ship which is wrecked, stranded, or in distress.

Penalty: \$500.

- (1A) Subsection (1) does not apply if the person has the leave of the master of the ship concerned.

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

- (2) The master of the ship may repel by force any person acting in contravention of this section.

314 Offences as to wreck

A person commits an offence if the person engages in conduct, and the conduct results in:

- (a) the impeding of the saving of any ship stranded or in distress, or of any wreck; or
- (b) the secreting of any wreck, or the defacing or obliteration of any marks on any wreck; or
- (c) the wrongful removal of any wreck.

Penalty: \$2,000.

314A Removal of wrecks on or near coast

- (1) If a ship or part of a ship is wrecked, stranded, sunk or abandoned on or near the coast of Australia, the Authority has, in regard thereto, the following powers:

- (a) to require the owner thereof, by notice in writing, to remove the wreck, or a specified part of the wreck, within a time

- specified in the notice, or give security for such removal to its satisfaction;
- (b) in the event of the owner not complying with such notice, to remove or to destroy the wreck, or the part of the wreck, as the case may be, in any manner it sees fit;
 - (c) to sell any wreck, or a part of any wreck, recovered under its orders, and out of the proceeds of the sale:
 - (i) to retain a sum to cover the expenses incurred in the recovery and sale of the wreck or the part of the wreck; and
 - (ii) to pay the surplus (if any) to the owner;
 - (d) to recover from the owner any expenses incurred by it in connection with such removal or destruction.
- (2) For the purposes of this section:
- owner** means the owner immediately prior to the time of the loss or abandonment of the ship or the part of the ship.
- (3) The provisions of subsection (1) have effect in relation to a wreck that is a historic wreck despite anything contained in the *Historic Shipwrecks Act 1976* but, in respect of a wreck that is a historic wreck, the Authority must not exercise any of the powers referred to in that subsection unless in its opinion it is necessary to do so for the purposes of:
- (a) saving human life; or
 - (b) securing the safe navigation of ships; or
 - (c) dealing with an emergency involving a serious threat to the environment.
- (4) The Authority shall not exercise any of the powers referred to in subsection (1) in relation to a wreck to which subsection 295B(1) applies unless in its opinion it is necessary to do so for the purpose of:
- (a) saving human life; or
 - (b) securing the safe navigation of ships; or
 - (c) dealing with an emergency involving a serious threat to the environment.
- (5) Section 2 does not have effect in relation to this section.

Division 3—Salvage

315 Certain provisions of Salvage Convention to have force of law

Articles 6 to 8, 12 to 19, 21 to 22, 26 and 30 of the Salvage Convention and the common understanding concerning Articles 13 and 14 of the Salvage Convention have the force of law in Australia.

316 Application of this Division

- (1) Subject to subsections (2) and (3), this Division applies whenever judicial or arbitral proceedings relating to the provision of salvage operations are brought in Australia.
- (2) The Division does not apply to:
 - (a) off-shore industry fixed structures; or
 - (b) off-shore industry mobile units;that are on location engaged in the exploration for, or the exploitation or production, of natural resources.
- (3) This Division does not apply to any salvage operation:
 - (a) that takes place in inland waters and that involves vessels all of which are of inland navigation; or
 - (b) that takes place in inland waters and does not involve a vessel; or
 - (c) to the extent that it involves property:
 - (i) that is maritime cultural property of prehistoric, archaeological or historic interest; and
 - (ii) that is situated on the seabed.

317 Application of section 2 to this Division

Unless otherwise specified, section 2 does not apply to this Division.

317A Assistance to persons in danger at sea

- (1) The master of a ship shall, so far as he or she can do so without serious danger to his or her ship, its crew and passengers (if any),

render assistance to any person, even if such person be a subject of a foreign State at war with Australia, who is found at sea in danger of being lost.

- (2) The master of a ship who fails to comply with the provisions of this section shall be guilty of an offence punishable on conviction by imprisonment for a period not exceeding 10 years.
- (3) Compliance by the master of a ship with the provisions of this section shall not affect his or her right, or the right of any other person, to make a claim in respect of a salvage operation.

329B Salvage claims against the Crown

- (1) Subject to subsection (2), this Part, other than Division 2, applies in relation to salvage operations conducted:
 - (a) to save life from, or to assist, a Government ship; or
 - (b) to save a wreck, or any cargo or equipment, which belongs to the Commonwealth or a State or Territory;in the same manner as if the ship, wreck, cargo or equipment belonged to a private person.
- (2) A claim does not lie against the Commonwealth or the Australian Postal Corporation by virtue of this section in respect of anything done or suffered in relation to an article in the course of post, or the contents of an article in the course of post, while the article is being carried by sea.
- (3) In this section:

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

329C Salvage claims by the Crown

- (1) If salvage operations are conducted by or on behalf of the Commonwealth, a State, a Territory or the government of a prescribed country, the Commonwealth, the State, the Territory or that government, as the case may be, is entitled to claim payment

Part VII Wrecks and salvage

Division 3 Salvage

Section 329C

in respect of those operations to the same extent, and has the same rights and remedies, as any other salvor.

- (2) The regulations may make provision in relation to salvage operations, and claims for salvage operations, conducted by or on behalf of the Commonwealth, a State, a Territory or the government of a prescribed country.
- (3) Without limiting the generality of subsection (2), the regulations which may be made by virtue of that subsection include regulations providing for or in relation to:
 - (a) the action to be taken with respect to ships and other property saved as a result of salvage operations conducted by or on behalf of the Commonwealth or a State or Territory;
 - (b) the execution of bonds for the payment of salvage operations so conducted;
 - (c) the taking of security for the performance of bonds executed under regulations made by virtue of paragraph (b);
 - (d) the adjudication on, and the enforcement of, bonds executed under regulations made by virtue of paragraph (b) or under a law of a prescribed country corresponding with those regulations; and
 - (e) the conditions subject to which claims for salvage operations may be made by the commander or master, or other members of the crew, of a Government ship or a ship belonging to a prescribed country.

Part VIII—Exclusion of shipowners' liability

Division 2—Exclusion of liability

338 Ship owner not to be liable in certain cases of loss of, or damage to, goods

The owner of a ship to which Part II applies or which is registered in a prescribed country shall not be liable to make good to any extent whatever any loss or damage happening without his or her actual fault or privity where:

- (a) any goods, merchandise or other things whatsoever taken in or put on board the ship are lost or damaged by reason of fire on board the ship; or
- (b) any goods, being gold, silver, diamonds, watches, jewels or precious stones taken in or put on board the ship, the true nature and value of which have not, at the time of shipment, been declared by the owner or shipper thereof to the owner or master of the ship in the bills of lading or otherwise in writing, are lost or damaged by reason of any robbery, embezzlement, making away with or secreting thereof.

Part IXA—Review of decisions

377B Decisions under Part I

Application may be made to the Administrative Appeals Tribunal for review of a decision under subsection 8B(2) refusing to give a direction, or a particular kind of direction, in relation to a ship or in relation to ships included in a class of ships, or the giving of a direction under that subsection subject to conditions or limitations.

377C Decisions under Part II

Application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision under subsection 14(6) refusing to exempt a ship or to exempt ships included in a class of ships, or the granting of an exemption under that subsection subject to conditions or limitations;
- (b) a decision under paragraph 14(9)(a) to cause a ship to be detained;
- (c) the imposing of a requirement under paragraph 14(9)(b);
- (e) the making of a determination under subsection 47(1), or a decision refusing to revoke a determination made under that subsection;
- (f) a decision under subsection 76(4) disallowing or refusing to disallow a deduction;
- (g) a decision refusing to give a direction under subsection 76(5) in relation to the master of a specified ship or the master of a ship included in a specified class of ships, or the giving of a direction under that subsection subject to conditions;
- (h) the imposing of a requirement under subsection 116(2), or a decision refusing to impose a requirement under that subsection;
- (j) a decision under subsection 116(4) certifying that there was no reasonable ground for a complaint;
- (k) a finding under subsection 120(2) that provisions or water are not of good quality;
- (m) the imposing of a requirement under subsection 126(2);

- (n) the imposing of a requirement under subsection 132A(1);
- (o) the imposing of a requirement under section 137;
- (p) a decision under subsection 156(1) or (3);
- (q) a decision under subsection 158(5) or (6);
- (r) a decision under section 158A;
- (s) a decision under section 159 refusing a claim to the property of a deceased seaman; or
- (t) the giving of a notice under subsection 162(1).

377CA Decisions under Part IIIA

Application may be made to the Administrative Appeals Tribunal for review of a decision under section 186K:

- (a) refusing to grant an exemption from the requirement to navigate with a pilot in a compulsory pilotage area; or
- (b) refusing to grant such an exemption as to a part of a ship's proposed navigation in a compulsory pilotage area.

377D Principal decisions under Part IV in relation to certificates and exemptions

Application may be made to the Administrative Appeals Tribunal for review of a decision under Part IV:

- (a) refusing to issue a certificate;
- (b) refusing to grant an exemption from a requirement in relation to a certificate or from any other requirement or any provision of this Act;
- (c) granting an exemption subject to conditions;
- (d) restricting an exemption;
- (e) determining the duration of a certificate or exemption;
- (f) refusing to extend a certificate or exemption;
- (g) cancelling or suspending a certificate;
- (h) refusing to permit a certificate to be amended; or
- (j) cancelling or suspending an exemption.

377E Other decisions under Division 1 of Part IV

Application may be made to the Administrative Appeals Tribunal for review of:

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- (a) a decision refusing to give a direction under subsection 187A(4), or the giving of a direction under that subsection subject to conditions;
- (b) a decision under section 187BA refusing to approve a standard of classification certificate;
- (c) the imposing of a requirement under subsection 190AA(3);
- (d) the imposing of a requirement under subsection 190A(4), or the detaining of a ship under that subsection;
- (e) a decision under subsection 191A(2) refusing to allow a particular fitting, material, appliance or apparatus, or type of fitting, material, appliance or apparatus, to be fitted or carried in a ship; or
- (f) a decision refusing to inform the owner or master of a ship as to satisfaction with the matter referred to in subsection 192C(3).

377F Other decisions under Division 3 of Part IV

Application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision under subsection 210(1) provisionally to detain a ship;
- (b) a decision under subsection 210(6) finally to detain a ship or to order its release on conditions;
- (c) a decision under subsection 210(7) refusing to order the release of a ship; or
- (d) a decision under subsection 213(1) requiring a complainant to give security for costs and compensation.

377G Other decisions under Divisions 4, 5, 6A and 10 of Part IV

Application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision refusing to issue a memorandum under subsection 216A(1);
- (b) the modifications specified in a memorandum issued under subsection 216A(1);
- (c) a decision not to make a request under subsection 227(1);
- (d) the detaining of a ship under section 227C;
- (e) the making of a declaration under subsection 227E(2);

- (f) the detaining of a ship under section 231D; or
- (g) the giving of a notice under subsection 254(1).

377H Other decisions under Divisions 12, 12A, 12C and 12D of Part IV

Application may be made to the Administrative Appeals Tribunal for review of the giving of a direction under subsection 267K(1), 267Y(1), 267ZQ(1) or 267ZZF(1).

377J Decisions under Part VB

Application may be made to the Administrative Appeals Tribunal for review of the giving of a direction under subsection 283F(1).

377K Decisions under Part XA

Application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision as to the terms of a tonnage measurement certificate under section 405F or 405H;
- (b) a decision refusing to issue a tonnage measurement certificate under section 405F or 405H; or
- (c) a decision not to make a request under section 405J.

377L Decisions under Part XI

Application may be made to the Administrative Appeals Tribunal for review of:

- (a) the imposing of a requirement under paragraph 413(1)(g);
- (b) a decision refusing to approve a security under subsection 418A(1); or
- (c) a decision under subsection 421 refusing to exempt a ship or person, or the granting of an exemption under that subsection subject to conditions.

377M Statements to accompany notices

- (1) This section applies where:

Section 377M

- (a) the person making a decision under this Act gives to a person whose interests are affected by the decision notice in writing of the making of the decision; and
 - (b) application may be made to the Administrative Appeals Tribunal for review of the decision.
- (2) The notice shall:
- (a) include a statement to the effect that, if the person is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision; and
 - (b) except where subsection 28(4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.
- (3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.
- (4) In this section, **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Part X—Legal proceedings

Division 1—Jurisdiction

378 Place where deemed to have been committed

For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either:

- (a) in the place in which it actually was committed or arose; or
- (b) in any place in which the offender or person complained against is.

379 Presumption of jurisdiction

If, in any legal proceeding under this Act, a question arises whether any ship or person is or is not within the provisions of this Act or of some part thereof, the ship or person shall be taken to be within those provisions unless the contrary is proved.

380 Jurisdiction over ships lying off coast

- (1) Where any district within which any Court has jurisdiction is situate on the sea coast, or abuts on or projects into any navigable water, the Court shall have jurisdiction over any ship being on or lying or passing off that coast, or being in or near that navigable water, and over all persons thereon or belonging thereto, in the same manner as if the ship or persons were within the limits of the original jurisdiction of the Court.
- (2) The jurisdiction in this section shall be in addition to, and not in derogation of, any jurisdiction or power of a Court of summary jurisdiction.

384 Action against official

- (1) No action shall lie against any official for anything done under the provisions of this Act, unless direct proof of corruption or malice be given.

Part X Legal proceedings

Division 1 Jurisdiction

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- (2) Any such action must be commenced within 3 months from the date of the act forming the subject of such action.
- (3) If the plaintiff in any such action discontinues, or is non-suited, or if judgment is given for the defendant, the latter shall have treble costs.

Division 2—Offences

385 Definitions

In this Division, unless the contrary intention appears:

appropriately qualified means having such training or experience as may be prescribed for the purposes of this definition.

approved laboratory means a laboratory approved by the Authority under paragraph 386J(1)(d) to conduct tests to determine a person's blood alcohol content under subsection 386B(3).

approved operator means an operator approved by the Authority under paragraph 386J(1)(b) to take breath samples under paragraph 386B(3)(a) or 386C(1)(d).

approved person means a person approved by the Authority under paragraph 386J(1)(c) to receive declarations under paragraph 386G(1)(b).

authorised person means a person:

- (a) who is appropriately qualified; and
- (b) who is approved as an authorised person by the Authority for the purposes of sections 386C, 386E and 386F.

breath analysis machine means a machine or device:

- (a) that is for taking and analysing samples of breath; and
- (b) that is of a kind approved by the Authority in accordance with regulations made for the purposes of paragraph 386J(1)(a).

386 General offences

No person shall:

- (c) refuse to answer any questions lawfully put to him or her, or to produce documents lawfully demanded of him or her;
- (d) refuse to give all reasonable assistance to any person who is carrying out any duty or power imposed on him or her by this Act;

Penalty: \$1,000.

386A Impairment of person's capacity to carry out duties as master or seaman

- (1) If a master or seaman is, while on board a ship, under the influence of alcohol or any other drug (whether medicinal or otherwise) to such an extent that the person's capacity to carry out the person's duties as master or seaman is impaired, the person is guilty of an offence.

Penalty: Imprisonment for 12 months.

- (2) If:
- (a) a master or seaman is, while on board a ship:
 - (i) under the influence of alcohol or any other drug (whether medicinal or otherwise) to such an extent that the person's capacity to carry out the person's duties as master or seaman is impaired; or
 - (ii) in breach of his or her duty as such a master or seaman; or
 - (iii) operating the ship in a dangerous manner; and
 - (b) the impairment, breach of duty or manner of operation causes or contributes to:
 - (i) the likelihood of loss or destruction of, or damage to, the ship or another ship, or to the cargo or equipment of the ship or another ship; or
 - (ii) the loss or destruction of, or damage to, the ship or another ship, or to the cargo or equipment of the ship or another ship; or
 - (iii) the likelihood of injury to, or of the death of, another person; or
 - (iv) injury to, or the death of, another person;
- the master or seaman commits an offence against this subsection.
- (3) An offence against subsection (2) is punishable, on conviction, as follows:
- (a) if the impairment, breach of duty or manner of operation caused or contributed to the likelihood of loss or destruction of, or damage to, the ship or another ship, or to the cargo or equipment of the ship or another ship—imprisonment for 2 years;

- (b) if the impairment, breach of duty or manner of operation caused or contributed to the actual loss or destruction of, or damage to, the ship or another ship, or to the cargo or equipment of the ship or another ship—imprisonment for 4 years;
- (c) if the impairment, breach of duty or manner of operation caused or contributed to the likelihood of injury to, or of the death of, another person—imprisonment for 5 years;
- (d) if the impairment, breach of duty or manner of operation caused or contributed to injury to another person—imprisonment for 7 years;
- (e) if the impairment, breach of duty or manner of operation caused or contributed to the death of another person—imprisonment for 10 years.

386B Unacceptable blood alcohol content

- (1) If a master or seaman has, while on board a ship, a blood alcohol content that equals or exceeds the specified limit, that person is guilty of an offence against this section.

Penalty: Imprisonment for 6 months.

- (1A) An offence under subsection (1) is an offence of strict liability.

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

- (2) The specified limit of blood alcohol content is:
 - (a) in the case of a master or of a seaman while on duty—.04 grams of alcohol per 100 millilitres of blood; or
 - (b) in the case of a master or seaman, on board the ship but not on duty—.08 grams of alcohol per 100 millilitres of blood.
- (3) The blood alcohol content of a person's blood may be determined:
 - (a) by a test of the person's breath by an approved operator using a breath analysis machine in a manner prescribed; or
 - (b) by an examination of the person's blood or urine by an approved laboratory.

386C Master or seaman may be required to undergo examination or to provide samples

- (1) If an authorised person has reasonable cause to believe:
- (a) that the capacity of a master or seaman to undertake the duties of his or her position is impaired because of alcohol or other drugs; or
 - (b) that the blood alcohol content of the blood of a master or seaman exceeds the specified limit;
- the authorised person may, by notice in writing given to the master or seaman, require the master or seaman to do all or any of the following:
- (c) undergo a physical examination by a medical practitioner;
 - (d) permit the taking of a sample of blood by a medical practitioner;
 - (e) provide a breath sample to, or to permit the taking of such a sample by, an approved operator of a breath analysis machine;
 - (f) provide a sample of urine to, or to permit the taking of a sample of urine by, an authorised person or a medical practitioner;
 - (g) provide a mouth swab to, or to permit the taking of a mouth swab by, an authorised person or a medical practitioner.
- (2) A notice under subsection (1) must set out:
- (a) the time at which the requirement was made; and
 - (b) the name of the person who made the requirement; and
 - (c) the place at which, and time within which, the master or seaman to whom the notice is given must present himself or herself for the purpose of undergoing the examination, or for providing or permitting the taking of the sample, or the mouth swab, to which the notice relates.
- (3) A notice under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

386D Refusal to provide sample of breath for analysis

A person who has, in accordance with the requirement of this Act, been required to provide a sample of breath for analysis is guilty of an offence if:

- (a) he or she refuses to provide a sample of breath for analysis;
or
- (b) he or she refuses to provide a sample of breath in accordance with the reasonable directions of the operator of a breath analysis machine.

Penalty: Imprisonment for 6 months.

386E Refusal to submit to physical examination or to provide samples

- (1) A person who is required under this Act to undertake a physical examination is guilty of an offence if:
 - (a) he or she fails or refuses to submit to the physical examination; or
 - (b) he or she fails or refuses, when required under this Act to do so, to provide a urine sample or mouth swab to the medical practitioner conducting the examination for analysis by an approved laboratory or to permit a blood or urine sample, or a mouth swab to be taken by the practitioner for that purpose.

Penalty: Imprisonment for 6 months.

- (1A) A person who is required under this Act to permit a medical practitioner to take a blood sample for analysis commits an offence if he or she refuses or fails to permit it to be taken.

Penalty: Imprisonment for 6 months.

- (2) A person who is required under this Act to provide a urine sample or a mouth swab to an authorised person or to a medical practitioner for analysis, or to permit an authorised person or a medical practitioner to take a urine sample or mouth swab for that purpose, commits an offence if he or she refuses or fails so to provide the sample, or to permit it to be taken.

Penalty: Imprisonment for 6 months.

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- (2A) An offence under subsection (1), (1A) or (2) is an offence of strict liability.

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

- (3) It is a defence to a prosecution for an offence against subsection (1), (1A) or (2) if the person establishes that the failure or refusal was based on religious or other conscientious grounds or on medical grounds.

386F Consumption of alcohol before undergoing examination etc.

- (1) If an authorised person requires a master or seaman to undergo a physical examination or to give or permit the taking of, a sample of breath, blood or urine for analysis, the person must not, before undergoing that examination or giving or permitting the taking of that sample of breath, blood or urine, consume any alcohol or take any other drug (whether medicinal or otherwise).

Penalty: Imprisonment for 6 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the person establishes that the taking of the drug:
- (a) was based on a reasonably held belief that failure to take the drug could endanger life or health; or
 - (b) was required by a prescription issued by a medical practitioner.

386G Medical drugs

- (1) A person who has taken, or who proposes to take, a drug for medical purposes must not come on duty or remain on duty after taking that drug unless:
- (a) the person has taken reasonable steps to satisfy himself or herself that the drug will not affect, or has ceased to affect, the person's capacity to perform the duties of his or her position; or
 - (b) the person has given a declaration to an approved person setting out:
 - (i) the circumstances in which the drug was taken, or will be taken; and
 - (ii) the nature and quantity of the drug involved; and

- (iii) the time or times at which the drug was taken or will be taken.

Penalty: Imprisonment for 6 months.

- (2) If the person referred to in subsection (1):
- (a) is a seaman other than a master—the person must give the declaration under subsection (1) in writing to the master of the vessel on which the person is performing his or her duties; and
 - (b) is a master—the person may give the declaration either in writing or by radio message or by facsimile or telephone to his or her employers.
- (3) A declaration made under subsection (1) must not be disclosed to or by a third person except for the purposes of seeking advice concerning the capacity of the person who gave the declaration to carry out the duties of his or her position.

Penalty: Imprisonment for 12 months.

- (4) If a person has given a declaration to another person under subsection (1), that other person must not allow the person who gave the declaration to come on duty or to remain on duty if the person to whom the declaration was made knows, or ought reasonably to have known, that the capacity of the person giving the declaration to carry out the duties of his or her position would be impaired by the drug concerned.

Penalty: Imprisonment for 12 months.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

386H Permitting or requiring performance of duties by impaired person

- (1) If a person:
- (a) permits or requires another person to undertake or to continue duty; and

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(b) knows or ought reasonably to know the other person's capacity to perform those duties is impaired by the influence of alcohol or any other drug;

the first-mentioned person is guilty of an offence.

Penalty: Imprisonment for 6 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the person establishes that the permission was given or the requirement made on the grounds of necessity.

386J Regulations

- (1) The regulations may make provision for the Authority to approve:
- (a) breath analysis machines designed and constructed to ascertain the concentration of alcohol present in a sample of a person's breath and capable of recording that concentration in grams per 100 millilitres of blood; and
 - (b) operators to carry out breath analysis using breath analysis machines; and
 - (c) persons to whom declarations under section 386G must be given; and
 - (d) laboratories to carry out analysis of urine and blood samples obtained by medical practitioners.
- (2) The regulations may make provision for the procedure to be undertaken:
- (a) by a medical practitioner in taking a sample of blood from a person; or
 - (b) by an approved operator in obtaining a sample of a person's breath; or
 - (c) by an authorised person or by a medical practitioner in taking a sample of urine or a mouth swab from a person.

387 Hindering or interfering with masters or officers

A person is guilty of an offence if the person, by violence, threat or intimidation, hinders or interferes with:

- (a) the master of a ship; or
- (b) an officer of a ship;

in the performance of the master's or officer's duty in relation to the maintenance of the discipline on board the ship.

Penalty: 50 penalty units or imprisonment for 2 years, or both.

387A Persuading or inciting breach of agreement

A person shall not persuade or incite a master or seaman to commit a breach of his or her agreement.

Penalty: \$500.

388 Being on board a ship unlawfully

- (1) No person (other than an official or a person duly authorized by the Minister or the Authority) shall go on board or remain alongside or hover near any ship in the port during the night.

Penalty: \$500.

- (1A) Subsection (1) does not apply if the person has a reasonable excuse or has the permission of the master of the ship concerned.

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

- (2) The master, an officer of Customs or an officer of police may apprehend and keep in safe custody any person so offending who shall be brought before a justice on the following morning.

389 False declarations etc.

A person who:

- (a) makes a false declaration, false statement or false representation; or
- (b) gives false evidence on oath, in connexion with an application or proceeding under this Act is guilty of an offence punishable on conviction by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

389A Offences in connection with certificates

(3) If a prescribed officer has reason to believe that an offence against section 137.1, 144.1, 145.1 or 145.2 of the *Criminal Code* has been committed in relation to a certificate, the officer may, by notice in writing to the person in possession of the certificate, require the certificate to be delivered to the officer.

(4) A person to whom a notice is given under subsection (3) shall comply with the notice.

Penalty: \$500.

(4A) An offence under subsection (4) is an offence of strict liability.

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

(5) Where a certificate has been delivered to a prescribed officer in pursuance of a notice given under subsection (3):

(a) the prescribed officer may, for the purpose of inquiring into the matter, retain the certificate until the expiration of a period of one month after the certificate was delivered to the officer; and

(b) if proceedings in respect of an offence against section 137.1, 144.1, 145.1 or 145.2 of the *Criminal Code* are pending in relation to the certificate at the expiration of that period, the officer may retain the certificate until the proceedings are discontinued or finally determined.

(6) In this section, *certificate* means any of the certificates of a master, officer, seaman or pilot that is issued under this Act, and includes a certified copy of such a certificate.

(7) For the purposes of subsection (6), *certificate*, in relation to a pilot, includes a licence issued to a pilot under regulations made under section 186C.

391 Beneficial owners subject to pecuniary penalties

(1) Where a person has a beneficial interest (including an equitable interest arising under contract or otherwise) in a ship, or a share in a ship, registered in the name of another person as owner, the person so interested is, as well as the registered owner, subject to any pecuniary penalty imposed by this Act on the owner of the ship

and proceedings may be taken for the enforcement of the penalty against the registered owner or the person so interested, or both of them, with or without joining them.

- (2) A person who has an interest in a ship, or a share in a ship, which arose by way of mortgage shall, for the purposes of subsection (1), be deemed not to have a beneficial interest in the ship or in that share in the ship unless he or she is in possession of the ship.

Division 3—Prosecution and penalties

395A Proceedings against Corporations

- (1) Where, in proceedings for an offence against this Act in respect of any conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that a director, servant or agent of the corporation, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a corporation:
 - (a) by a director, servant or agent of the corporation within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the corporation, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;shall be deemed, for the purposes of a provision of this Act that creates an offence, to have been engaged in by the corporation.
- (3) A reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

396 Limitation of actions

- (1) No action shall be maintainable to enforce any claim or lien against a ship or its owners in respect of any damage or loss to another ship, its cargo or freight, or any property on board the ship, or damage for loss of life or personal injuries suffered by any person on board the ship, caused by the fault of the former ship, whether such ship be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within 2 years from the date when the damage or loss or injury was caused or the salvage services rendered were terminated.

- (2) No action shall be maintainable under this Act to enforce any contribution in respect of an over-paid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment.
- (3) Any Court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any period mentioned in this section to such an extent and on such conditions as it thinks fit.
- (4) For the purposes of this section, the expression “freight” includes passage money and hire, and reference to damage or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses consequent upon that fault, recoverable at law by way of damages.

397 Offences against certain provisions of Act and regulations

- (1) Section 19B of the *Crimes Act 1914* does not apply to an offence to which this section applies by virtue of subsection (2) or to an offence against the regulations that is declared by the regulations to be an offence to which this section applies.
- (2) This section applies to offences against the following provisions of this Act:
subsections 14(8) and (11), section 16, subsection 125(1), section 186E, subsections 188(4) and 190A(1), section 191B, subsections 192C(4), 193(1), 202(1) and 206H(2), sections 206S, 206T, 206U, 206V and 217, subsections 221(4) and (8), 227A(1) and 227B(1), sections 227D, 228, 231A, 231B, 231C and 233, subsections 235(1) and (2), section 236, subsection 249(1), section 253, subsections 253A(2) and 254(1), sections 255 and 268 and subsection 269A(1).

399 Distress and sale of ships

In all cases in which any Court directs payment of any sum of money by any party, being the master or owner of a ship, and that party does not pay it in accordance with the order, the Court making the order may, in addition to any other of its powers, direct the amount or the portion thereof remaining unpaid to be levied by

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distress and sale of the whole or any portion of the ship and its equipment, and they shall be sold accordingly.

Division 3A—Civil penalty provisions

Subdivision A—Application

399A *Civil penalty provisions*

A provision of this Act is a *civil penalty provision* if:

- (a) the provision sets out at its foot a pecuniary penalty, or penalties, indicated by the words “Civil penalty”; and
- (b) the provision is a subsection, or a section that is not divided into subsections.

Subdivision B—Obtaining a civil penalty order

399B *Civil penalty orders*

Application for order

- (1) The Authority may apply to the Court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The Authority must make the application within 6 years of the alleged contravention.

Court may order person to pay pecuniary penalty

- (3) If the Court is satisfied that the person has contravened the civil penalty provision, the Court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the Court determines to be appropriate.

Note: Subsection (5) sets out the maximum penalty that the Court may order the person to pay.

- (4) An order under subsection (3) is a *civil penalty order*.

Determining pecuniary penalty

- (5) The pecuniary penalty must not be more than:
 - (a) if the person is a body corporate—5 times the pecuniary penalty specified for the civil penalty provision; and

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- (b) otherwise—the pecuniary penalty specified for the civil penalty provision.
- (6) In determining the pecuniary penalty, the Court may take into account all relevant matters, including:
 - (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered because of the contravention; and
 - (c) the circumstances in which the contravention took place; and
 - (d) whether the person has previously been found by a court to have engaged in any similar conduct.

399C Civil enforcement of penalty

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

399D Conduct contravening more than one civil penalty provision

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Division against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Division in relation to the same conduct.

399E Multiple contraventions

- (1) The Court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

Note: For continuing contraventions of civil penalty provisions, see section 399P.

- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

399F Proceedings may be heard together

The Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

399G Civil evidence and procedure rules for civil penalty orders

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

399H Contravening a civil penalty provision is not an offence

A contravention of a civil penalty provision is not an offence.

Subdivision C—Civil proceedings and criminal proceedings

399J Civil proceedings after criminal proceedings

The Court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

399K Criminal proceedings during civil proceedings

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
- (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
 - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise:
- (a) the civil proceedings are dismissed; and

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- (b) costs must not be awarded in relation to the civil proceedings.

399L Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

399M Evidence given in civil proceedings not admissible in criminal proceedings

- (1) Evidence of information given, or evidence of production of documents by an individual, is not admissible in criminal proceedings against the individual if:
 - (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
 - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

Subdivision D—Miscellaneous

399N Ancillary contravention of civil penalty provisions

- (1) A person must not:
 - (a) attempt to contravene a civil penalty provision; or
 - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
 - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
 - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or

- (e) conspire with others to effect a contravention of a civil penalty provision.

Note: Section 399R (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to subsection (1) of this section.

Civil penalty

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

399P Continuing contraventions of civil penalty provisions

- (1) If an act or thing is required under a civil penalty provision to be done:
 - (a) within a particular period; or
 - (b) before a particular time;then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).
- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
 - (a) within a particular period; or
 - (b) before a particular time;commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

399Q Mistake of fact

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
 - (a) at or before the time of the conduct constituting the contravention, the person:
 - (i) considered whether or not facts existed; and
 - (ii) was under a mistaken but reasonable belief about those facts; and
 - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.

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- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
 - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
 - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

399R State of mind

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subsection 399N(1)), it is not necessary to prove:
 - (a) the person's intention; or
 - (b) the person's knowledge; or
 - (c) the person's recklessness; or
 - (d) the person's negligence; or
 - (e) any other state of mind of the person.
- (2) Subsection (1) does not affect the operation of section 399Q (which is about mistake of fact).

Division 4—Evidence and service

400 Production of depositions

- (1) Whenever in the course of any legal proceeding the testimony of any witness is required in relation thereto, then upon due proof that the witness cannot be found in Australia, any deposition that the witness has previously made on oath in relation to the same subject-matter before any Judge or magistrate in a prescribed country, or before a consul of a prescribed country, shall be admissible in evidence, provided that:
 - (a) if the deposition was made in Australia, it shall not be admissible in any proceeding instituted in Australia;
 - (b) if the proceeding is criminal, the deposition shall not be admissible unless it was made in the presence of the person accused.
- (2) A deposition so made shall be authenticated by the signature of the Judge, magistrate, or consul before whom it is made, and the Judge, magistrate or consul shall certify, if the fact is so, that the accused was present at the taking thereof.
- (3) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition, and in any criminal proceeding a certificate under this section shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.
- (4) Nothing in this section shall affect any case in which depositions taken in any proceeding are rendered admissible in evidence by any law of the Commonwealth or of a State or Territory.

401 Proof of certificates and other documents

- (1) All certificates and other documents purporting to be issued in pursuance of this Act by any official, and to be signed by that official, shall be taken to have been so issued and signed unless the contrary is proved.
- (2) Every document purporting to be an office copy of any such certificate or other document, and to be signed in the manner

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required, shall be admissible in evidence, and shall be deemed to be a true copy of the original.

- (3) In proving the transmission of any such certificate or other document to any person required by this Act to possess such a certificate or other document, it shall be sufficient to prove that it:
- (a) was duly received by some officer in the public service, and was delivered by such officer to or left at the place of abode or business of such person; or
 - (b) was forwarded to the person by registered letter.
- (4) In this section:

certificate includes a licence issued to a pilot under regulations made under section 186C.

402 Evidence as to execution

Any document required by this Act to be executed in the presence of, or to be attested by, a witness, may be proved by the evidence of any person who is able to bear witness to the facts without calling any attesting witness.

403 Admissibility of documents in evidence

- (1) Where a document is by this Act declared to be admissible in evidence, it shall, on production from the proper custody, be admissible in evidence in any court, or before any person having by law or consent of parties authority to receive evidence, and, subject to all just exceptions, shall be evidence of the matters stated therein in pursuance of this Act or in pursuance of any duty under this Act.
- (2) A copy of, or extract from, any such document shall also be admissible in evidence if:
- (a) it is proved to be an examined copy or extract; or
 - (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted;
- and that officer shall, upon payment of the prescribed fee, furnish a copy or extract so certified to any person applying for it.

- (3) Where a document is by this Act declared to be admissible in evidence, a copy of, or an extract from, the document certified by a proper authority, by writing under his or her hand, to be a copy of, or an extract from, that document is, in all courts, admissible in evidence without further proof or production of the original.
- (4) Unless the contrary is proved, a certificate purporting to have been signed by a proper authority shall be deemed to have been signed by the person by whom it purports to be signed and that person shall be deemed to be a proper authority.

403A Evidence in proceedings

In any proceeding:

- (a) a record kept for the purposes of this Act by an official is admissible as *prima facie* evidence of the matters stated in the record;
- (b) a copy of an entry in such a record, being a copy certified by the person by whom the record is kept to be a true copy of the entry, is admissible as *prima facie* evidence of the matters stated in the entry; and
- (c) a document purporting to be such a record, or purporting to be such a certified copy, shall, unless the contrary is established, be deemed to be such a record or certified copy and to have been duly kept or certified, as the case may be.

404 Service of summons

Service of any summons or process in any legal proceeding under this Act shall be deemed good service if made:

- (a) personally on the person to be served; or
- (b) at his or her last known place of abode or business; or
- (c) on board any ship to which he or she belongs, and accompanied with a statement of the purport thereof to the person being or appearing to be in command or charge of the ship.

405 Service of notice where there is no master

Where any order, notice, statement, or document is required for the purpose of any provision of this Act to be served on the master of a ship, it shall be served, where there is no master and the ship is

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within the limits of Australia, on the managing owner of the ship, or, if there is no managing owner, on some agent of the owner residing in Australia, or, where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

Division 5—Proceedings against the Crown

405A Proceedings against the Crown

- (1) Nothing in this Act:
 - (a) authorizes proceedings *in rem* in respect of a claim against the Commonwealth or a State or Territory or the arrest, detention or sale of a Government ship or of cargo or other property belonging to the Commonwealth or a State or Territory; or
 - (b) gives to any person a lien on a Government ship or cargo or other property belonging to the Commonwealth or a State or Territory.

Part XA—Tonnage measurement of ships

405B Interpretation

- (1) In this Part, unless the contrary intention appears:

Australian tonnage measurement certificate means a certificate issued under subparagraph 405F(a)(ii) or paragraph 405F(b).

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

international voyage means a voyage:

- (a) from a port in Australia to a port outside Australia;
- (b) to a port in Australia from a port outside Australia;
- (c) from a port in a Tonnage Measurement Convention country to a port outside that country; or
- (d) to a port in a Tonnage Measurement Convention country from a port outside that country.

ship to which the Tonnage Measurement Convention applies means a ship to which, in accordance with Articles 3 and 4 of the Tonnage Measurement Convention, that Convention applies.

Tonnage Measurement Convention means the International Convention on Tonnage Measurement of Ships, 1969 (a copy of the English text of the articles of which, and of the annexes to which, is set forth in Schedule 8), as affected by any amendment, other than an amendment not accepted by Australia, made under Article 18 of the Convention.

Tonnage Measurement Convention certificate means an International Tonnage Certificate (1969) issued under subparagraph 405F(a)(i).

Tonnage Measurement Convention country means a country or territory specified in a notice under section 405C.

- (2) For the purpose of determining whether a voyage is an international voyage:
 - (a) account shall not be taken of a deviation by a ship from an intended voyage if the deviation is due only to stress of weather or any other circumstance that neither the master nor the owner of the ship could have prevented or forestalled; and
 - (b) a territory for which the United Nations are the administering authority, or for the international relations of which Australia or any other country is responsible, shall be deemed to be a separate country.
- (3) For the purposes of this Part, an unregistered ship flying the flag of a country shall be deemed to be registered in that country.
- (4) Where a ship in the course of construction, or the construction of which has been completed, has not been registered and is not flying the flag of a country, but is intended to be registered in a particular country, the ship shall, for the purposes of this Part, be deemed to be registered in that country.

405C Declaration of countries to which the Tonnage Measurement Convention applies

The Authority may, by notice published in the *Gazette*, declare that, for the purposes of this Part, a country or territory, other than Australia, specified in the notice is a country or territory to which the Tonnage Measurement Convention applies.

405D Certificate by Minister as to amendments of Convention

The Minister may, by writing under his or her hand, certify that the amendments, other than amendments not accepted by Australia, by which the Tonnage Measurement Convention was affected as at such date as is specified in the certificate are set out in, or annexed to, the certificate, and such a certificate is, for all purposes, *prima facie* evidence of the matters so certified.

405E Tonnage measurement regulations

- (1) The regulations may make provision for and in relation to giving effect to the Tonnage Measurement Convention and may, for any purpose specified in the regulations, otherwise make provision (not inconsistent with the Convention) for or in relation to the ascertainment of the tonnage of ships.
- (2) Any regulations or orders that make provisions for or in relation to giving effect to the Tonnage Measurement Convention may be expressed to apply to a ship, or a class of ships, that is not engaged on international voyages or to which the Convention otherwise does not apply, and may be expressed so as to apply with or without modifications specified in or to be determined under the regulations or orders, as the case may be.
- (3) The Governor-General may, with respect to a provision of the Tonnage Measurement Convention the terms of which are such as to vest in the several governments who are parties to the Convention a discretion as to whether any, and, if any, as to what, action should be taken thereunder, make, by regulation, such provision (if any) as the Governor-General in the exercise of that discretion thinks appropriate.

405F Issue of tonnage measurement certificates

Where the tonnage of a ship is measured under the regulations or orders, the Authority, or a survey authority authorized by the Authority, by instrument in writing, to issue certificates under this section, may issue in respect of the ship:

- (a) if the ship is registered in Australia and is a ship to which the Tonnage Measurement Convention applies or would be such a ship if it were engaged on international voyages:
 - (i) an International Tonnage Certificate (1969); and
 - (ii) such other tonnage measurement certificates as the regulations or orders provide should be issued in respect of the ship; or
- (b) in any other case—such tonnage measurement certificates as the regulations or orders provide should be issued in respect of the ship.

405G Extension and cancellation of certificates

- (1) Provision may be made in the regulations for and in relation to:
 - (a) the cancellation, in accordance with paragraph (1) of Article 10 of the Tonnage Measurement Convention, of a Tonnage Measurement Convention certificate; and
 - (b) the continuance in force, in accordance with paragraph (3) of Article 10 of the Tonnage Measurement Convention, of a Tonnage Measurement Convention certificate.
- (2) Subject to the regulations or orders, a Tonnage Measurement Convention certificate ceases to have effect if the ship in respect of which it was issued ceases to be registered in Australia.
- (3) The regulations may specify circumstances in which an Australian tonnage measurement certificate ceases to have effect and may make provision for and in relation to the extension or cancellation of an Australian tonnage measurement certificate.
- (4) Where a Tonnage Measurement Convention certificate or an Australian tonnage measurement certificate is cancelled:
 - (a) the certificate is of no force or effect after the Authority has given notice in writing of the cancellation to the owner, agent or master of the ship in respect of which the certificate was issued; and
 - (b) the Authority may require the owner or master of the ship in respect of which the certificate was issued to deliver up the certificate to the Authority or to such other person as the Authority directs, and the ship may be detained until the requirement is complied with.

405H Tonnage Measurement Convention country may request Authority to issue certificate

- (1) Upon receipt of a request by the government of a Tonnage Measurement Convention country for the issue of an International Tonnage Certificate (1969) in respect of a ship that is registered in that country and a ship to which the Tonnage Measurement Convention applies, the Authority may:
 - (a) cause the tonnage of the ship to be measured under the regulations or orders; and

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- (b) issue, or cause to be issued, an International Tonnage Certificate (1969) in respect of the ship.
- (2) A certificate issued under this section:
 - (a) shall contain a statement to the effect that it has been issued at the request of the government of the country in which the ship is registered; and
 - (b) has effect, for the purposes of this Act, as if it had been issued by that government.

405J Authority may request Tonnage Measurement Convention country to issue certificate

- (1) The Authority may request the government of a Tonnage Measurement Convention country to issue, or cause to be issued, in respect of a ship that is registered in Australia and is a ship to which the Tonnage Measurement Convention applies, an International Tonnage Certificate (1969).
- (2) A certificate issued in pursuance of such a request and containing a statement that it has been so issued has effect, for the purposes of this Act, as if it had been issued by the Authority under subparagraph 405F(a)(i).

405K Power of inspection of surveyors

- (1) A surveyor may at any reasonable time go on board a ship that is at a port in Australia, being a ship that is registered in a Tonnage Measurement Convention country and is a ship to which the Tonnage Measurement Convention applies, and:
 - (a) may require the production of the International Tonnage Certificate (1969) issued in respect of the ship; and
 - (b) may inspect the ship, or any part of the ship, for the purpose of verifying that the main characteristics of the ship correspond to the data given in the certificate.
- (2) A person shall not fail to comply with a requirement made by a surveyor under subsection (1).

Penalty: \$500.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

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

- (4) An offence under subsection (2) is an offence of strict liability.

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

405M Register tonnage of non-Convention ships

- (1) The amount of the register tonnage specified in the certificate of registry of a ship registered in a prescribed country, other than a ship to which the Tonnage Measurement Convention applies, shall be the register tonnage of the ship for the purpose of this Act.
- (2) The amount of the register tonnage of a ship, other than a ship registered in a prescribed country or a ship to which the Tonnage Measurement Convention applies, shall, for the purposes of this Act, be the register tonnage of the ship as determined in accordance with directions given in writing by the Authority in relation to the ship or the class of ships in which the ship is included.

405N Tonnage of non-Convention ships to be measured in certain cases

Where:

- (a) an unregistered ship, other than a ship to which the Tonnage Measurement Convention applies, enters a port in Australia; or
- (b) a dispute arises as to the tonnage of a ship, other than a ship to which the Tonnage Measurement Convention applies;
- the tonnage of the ship shall be measured under the regulations or orders.

405P Assignment of other tonnages to non-Convention ships

- (1) Where, under the regulations or orders, there is assigned to a ship a gross tonnage and a register tonnage, instead of the gross tonnage and register tonnage ascertained in relation to the ship in accordance with the other provisions of those regulations, this Act applies in relation to the ship as if references in this Act to gross

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tonnage were references to the gross tonnage so assigned and references in this Act to register tonnage were references to the register tonnage so assigned.

- (2) Where, under the regulations or orders, there is assigned to a ship a gross tonnage and a register tonnage, as alternatives to the gross tonnage and register tonnage ascertained in relation to the ship in accordance with the other provisions of those regulations, the assignment of such a gross tonnage and register tonnage shall be disregarded for the purposes of this Act, without prejudice to its effect for the purposes of any other law.
- (3) This section does not apply to a ship to which the Tonnage Measurement Convention applies.

Part XI—Miscellaneous**407 Application of penalties and moneys**

- (1) Unless the contrary intention appears in this Act, all penalties, forfeitures, fees, or moneys recovered or received under this Act shall be paid to the Commonwealth.
- (2) Subsection (1) does not apply:
 - (a) to fees or moneys recovered or received in respect of a function performed by the Authority; or
 - (b) to fees that, under the regulations, are payable to the Authority.

410 Copy of Act to be kept on certain ships

- (1) The master of a ship to which Part II applies shall keep a copy of this Act on board the ship.

Penalty: 5 penalty units.
- (2) In subsection (1), “this Act”, except to the extent that the regulations provide otherwise, does not include regulations or orders made under this Act or in pursuance of the regulations.

410A Charts

- (1) The master of a ship shall not take the ship to sea, and the owner of the ship shall not permit the ship to go to sea, unless it is supplied with charts, of a suitable scale and properly corrected down to the time of sailing, necessary for use on the particular voyage about to be undertaken.

Penalty (on master or owner): \$2,000 or imprisonment for 12 months, or both.
- (2) Every officer employed in connexion with the navigation of a ship to which this section applies shall have free access to the charts belonging to the ship in use during the voyage.

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Penalty, on master: \$2,000 or imprisonment for 12 months, or both.

(3) In this section:

chart includes a chart in electronic form.

410B Civil liability in relation to ship under pilotage

(1) A pilot who has the conduct of a ship is subject to the authority of the master of the ship and the master is not relieved from responsibility for the conduct and navigation of the ship by reason only of the ship being under pilotage.

(2) Despite any law of the Commonwealth or of a State or Territory, the owner or master of a ship navigating under circumstances in which pilotage is compulsory under such a law is answerable for any loss or damage caused by the ship, or by a fault of the navigation of the ship, in the same manner as the master or owner would if pilotage were not compulsory.

(3) If a pilot:

(a) does an act, issues an instruction, or provides information or advice in or in relation to the pilotage of a ship; and

(b) that act is done, that instruction is issued, or that information or advice is provided, in the course of the pilot's duty and in good faith; and

(c) that act, instruction, information or advice affects the navigation of the ship so that loss or damage is caused to or by the ship;

neither the pilot nor any pilotage provider responsible for the provision of the pilot's services is liable in civil proceedings for that loss or damage.

411 Liability of master or owner under vessel traffic management arrangements

(1) The master of a ship is not relieved from responsibility for the conduct and navigation of the ship merely because the ship is subject to vessel traffic management arrangements.

(2) Despite any law of the Commonwealth or of a State or Territory, the owner or master of a ship navigating in circumstances where

vessel traffic management arrangements are required to be complied with under such a law is answerable for any loss or damage caused by the ship, or by a fault of the navigation of the ship, in the same manner as the master or owner would be if those vessel traffic management arrangements were not required to be complied with.

(3) In this section:

vessel traffic management arrangements means any measures that affect a ship's navigation implemented under a vessel traffic service by a person not on board the ship.

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

412 Search of vessels

A person authorised by the Minister or by the Authority may, with such assistance as is reasonably necessary, search a ship in a port where the person has reasonable grounds for believing the search to be necessary for the purposes of this Act.

413 Powers of Minister

- (1) The Minister, or any person authorized by the Minister or the Authority, may:
- (a) go on board any ship at any time and inspect the hull, boilers and machinery equipment or any article on board or connected with the ship;
 - (b) enter and inspect any premises;
 - (c) summon persons before him or her and require them to answer questions;
 - (d) require and enforce the production of documents by any person;
 - (e) administer oaths;
 - (f) muster the crew and passengers of any ship; and
 - (g) require and take securities for compliance with this Act.

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- (2) No person who, in pursuance of this section, is summoned to appear and answer questions or to produce documents or to appear on muster shall fail to so appear or to answer questions or to produce the documents he or she is lawfully required to produce, or to appear on muster.

Penalty: \$1,000.

- (3) Subsection (2) does not apply if the person has just cause.

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

414 Detention of ships

- (1) Where, under this Act, a ship is to be or may be detained, a superintendent or an officer of Customs may detain the ship.
- (2) The master of a ship commits an offence if:
- (a) the ship has been detained or notice of detention of the ship has been served on the master; and
 - (b) following that detention or the service of that notice, the ship goes to sea before it is released by a competent authority.

Penalty: 500 penalty units.

415 Taking official to sea

- (1) The master and owner of a ship each commit an offence if:
- (a) an official performing any duty under this Act is taken to sea in the ship without his or her consent; and
 - (b) neither the master nor the owner took reasonable steps to prevent the official being so taken to sea.

Penalty: 100 penalty units.

- (1A) If either the master or owner of a ship is found to have committed an offence against subsection (1), the master and owner are jointly and severally liable to pay all expenses incidental to the official's return to duty.

- (2) An offence under subsection (1) is an offence of strict liability.

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

416 Refusal of clearance

Where under this Act any ship is to be detained or may be detained, or where the requirements of this Act with regard to the ship or its officers, crew, or equipment have not been complied with, all officers of Customs may refuse to grant outward clearance to that ship or to grant the ship any transire or any document in the nature thereof.

417 Births, deaths etc.

- (1) Where, to the knowledge of the master of a ship to which Part II applies:
- (a) a member of the crew of the ship, or a passenger or any other person carried on the ship, gives birth to a child, dies or disappears; or
 - (b) a member of the crew suffers a hurt or injury, or contracts an illness, which incapacitates him or her from the performance of his or her duty;
- the master shall:
- (c) record the occurrence in the official log-book of the ship together with such particulars with respect to the occurrence as are prescribed; and
 - (d) as soon as practicable, furnish to a proper authority a report in writing of the occurrence in accordance with the prescribed form.

Penalty: \$500.

- (3) Where the death, disappearance or illness of, or a hurt or injury to, a person is reported to a proper authority under this section, a proper authority, or such other person as the Authority approves, may, unless the Authority otherwise directs, inquire into the occurrence.
- (4) A person who inquires into an occurrence under subsection (3) shall:
- (a) enter in the official log-book of the ship concerned a statement to the effect that, in that person's opinion, the record of the occurrence in the official log-book of the ship is correct or is not correct, as the case requires; and

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- (b) furnish a copy of the entry to the Authority or to such other person as is prescribed.

418A Security

- (1) A security required or authorized to be given under this Act shall be given in a manner and form approved by the Minister or the Authority, as appropriate, by instrument in writing and may, subject to that approval, be by bond, guarantee, cash deposit or any other method, or by 2 or more different methods.
- (2) The prescribed form of security shall suffice for all the purposes of a bond or guarantee under this Act, and, without sealing, shall bind its subscribers as if sealed, and, unless otherwise provided therein, jointly and severally and for the full amount.

419 Seal

For the purposes of this Act, the Minister shall have a seal, the design of which shall be approved by the Minister by instrument in writing.

421 Power of exemption

- (1) The Minister or the Authority may, in writing, direct that this Act does not apply, or specified provisions of this Act do not apply, to:
 - (a) a ship or class of ships; or
 - (b) a person or class of persons.
- (2) An exemption under subsection (1) may be confined to one or both of the following:
 - (a) one or more specified periods;
 - (b) one or more specified voyages or operations.
- (3) An exemption under subsection (1) is subject to such conditions (if any) as are specified in the direction.
- (4) If a condition that is applicable to an exemption of a ship is contravened, the master and the owner of the ship are guilty of an offence.

Penalty: Imprisonment for 4 years.

(4A) An offence under subsection (4) is an offence of strict liability.

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

(5) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (3) to comply with a condition; and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the requirement.

Penalty: Imprisonment for 4 years.

(5A) Strict liability applies to paragraph (5)(a).

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

- (6) The Minister or the Authority must not make a direction if the proposed exemption would be inconsistent with an obligation of Australia under an international agreement.
- (7) The Minister or the Authority must not make a direction unless satisfied that the proposed exemption will not jeopardise the safety of a ship or persons on board a ship.

424 Marine Council

- (1) There shall be a Marine Council.
- (2) The Marine Council shall consist of:
 - (a) an employee of the Authority;
 - (b) 4 members representing shipowners;
 - (c) a member representing deck officers;
 - (d) a member representing engine-room officers;
 - (e) 2 members representing seamen other than officers; and
 - (f) for the purposes of inquiring into, and reporting to the Minister on, a matter referred to the Council under subsection (5)—any members appointed under subsection (3A) for the purpose of assisting the Council to inquire into, and report on, the matter.
- (3) The members of the Marine Council (other than the members referred to in paragraph (2)(f)) shall be appointed by, and hold office during the pleasure of, the Minister.

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- (3A) The Minister may, for the purpose of assisting the Marine Council to inquire into, and report to the Minister on, a matter referred to the Council under subsection (5), appoint a person with special knowledge of the matter to be a member of the Council for the purposes of inquiring into, and reporting to the Minister on, the matter.
- (3B) The following provisions apply in relation to a person appointed as a member under subsection (3A) for the purpose of assisting the Marine Council to inquire into, and report on, a matter:
 - (a) subject to paragraph (b), the person's appointment ends when the Council completes its inquiry and report in relation to the matter;
 - (b) until the Council completes its inquiry and report in relation to the matter, the person holds office during the pleasure of the Minister.
- (4) The member of the Marine Council referred to in paragraph (2)(a) shall be the Chairperson of the Marine Council.
- (4A) The Minister may appoint a person to be the deputy of the Chairperson or of any other member of the Marine Council.
- (4B) The deputy of the Chairperson is, in the event of the absence of the Chairperson from a meeting of the Marine Council, entitled to attend the meeting and, when so attending, shall be deemed to be Chairperson of the Marine Council.
- (4C) The deputy of a member other than the Chairperson is, in the event of the absence of the member of whom he or she is the deputy from a meeting of the Marine Council, entitled to attend the meeting and, when so attending, shall be deemed to be a member of the Marine Council.
- (4D) At a meeting of the Marine Council from which the Chairperson and the deputy of the Chairperson are absent, another member appointed by the members present at the meeting shall preside.
- (5) The Marine Council shall inquire into and report to the Minister upon any matter arising out of or relating to this Act which the Minister refers to the Council for advice.

- (6) Regulations shall not be made for the purposes of section 117 unless the Minister has first obtained from the Marine Council a report on the proposed regulations.
- (8A) The Chairperson and other members of the Marine Council, and the deputies of the Chairperson and other members of the Marine Council, shall be paid such remuneration as is determined by the Remuneration Tribunal.
- (8B) The Chairperson and other members of the Marine Council, and the deputies of the Chairperson and other members of the Marine Council, shall be paid such allowances as are prescribed.
- (8C) Subsections (8A) and (8B) have effect subject to the *Remuneration Tribunal Act 1973*.
- (9) The regulations may make provision for and in relation to:
 - (b) the number of members of the Marine Council to constitute a quorum;
 - (c) the manner in which the Marine Council may exercise its powers and functions; and
 - (d) the manner in which the business and meetings of the Marine Council shall be conducted.

425 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act or for the conduct of any business under this Act, and in particular prescribing matters providing for and in relation to:
 - (a) the inspection and testing of machinery and appliances for the loading and unloading of ships;
 - (b) the prevention of the use of defective machinery or appliances for the loading or unloading of ships;
 - (c) the protection of the health and the security from injury of persons engaged in the loading or unloading of ships;
 - (d) matters affecting the stability of ships;
 - (da) the regulation of the use of lights or fire in the holds of ships;
 - (db) the safe navigation and operation of ships;
 - (dc) vessel traffic services (within the meaning of section 411);

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- (e) the safety of persons, including pilots, going on or coming from, or on board, ships;
- (ea) the training and qualifications of masters and seamen;
- (eb) the maximum number of hours that masters or seamen may be required to work in a particular period of time;
- (g) the issue of certificates as to the service at sea of seamen;
- (h) the imposition of penalties not exceeding 50 penalty units for a contravention of:
 - (i) a provision of the regulations; or
 - (ii) a provision of an order made under subsection (1AA);
or
 - (iii) a notice, order, direction or instruction given, issued or made under, or in force by virtue of, the regulations;
- (ha) the manner in which notices, orders, directions, instructions or other documents under this Act may be given, served or notified; and
- (i) the fixing of the fees to be paid in respect of any matters under this Act.

(1AA) The Authority may, by legislative instrument, make orders with respect to any matter in Part II, III, IIIA, IV, V, VA, VB or XA for or in relation to which provision may be made by the regulations, other than matters referred to in paragraph (1)(h).

Note: Part 6 of the *Legislative Instruments Act 2003*, which deals with sunseting of legislative instruments, does not apply to an order under this subsection (see item 27 of the table in subsection 54(2) of that Act).

- (2) The power to make regulations and orders conferred by this Act shall not be taken, by implication, not to include the power to make provision for or in relation to a matter by reason only of the fact that:
- (a) provision is made by this Act or the regulations, as the case may be, in relation to that matter or another matter; or
 - (b) power is expressly conferred by this Act or the regulations, as the case may be, to make provision by regulation or order for or in relation to another matter.

- (3) The power to make regulations and orders conferred by this Act may be exercised:
 - (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
 - (b) so as to make, as respects the cases in relation to which it is exercised, the same provision for all those cases or a different provision for different cases or classes of case.
- (4) The power conferred by this Act to make modifications by regulation includes the power to omit any matter or add any new matter.
- (5A) Unless the contrary intention appears, expressions used in orders have the same meanings as in this Act.
- (5B) Orders shall be read subject to this Act and so as not to exceed the power conferred by this Act to the intent that, where such orders would, but for this subsection, have been construed as being in excess of the power conferred by this Act, they shall be deemed to be valid orders to the extent to which they are not in excess of that power.
- (5C) Where a provision of an order is inconsistent with a provision of this Act or the regulations, the latter shall prevail and the former shall, to the extent of the inconsistency, be of no force or effect.
- (6A) Despite section 14 of the *Legislative Instruments Act 2003*, the regulations may make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in orders as in force or existing from time to time.
- (7) Despite section 14 of the *Legislative Instruments Act 2003*, the regulations, and orders under this Act, may make provision for or in relation to a matter by applying, adopting or incorporating all or any of the provisions of the Code referred to in section 427 as in force or existing from time to time.

426A Power to provide in orders for review of decisions

An order made under subsection 425(1AA) shall be taken, for the purposes of the *Administrative Appeals Tribunal Act 1975*, to be an enactment.

427 Ministerial orders concerning Uniform Shipping Laws Code and the NSCV

- (1) In this section:

Code means the code known as the Uniform Shipping Laws Code adopted by the Council.

Council means the conference of Commonwealth, New Zealand, State, Australian Capital Territory and Northern Territory Ministers known as the Australian Transport Council.

NSCV means the National Standard for Commercial Vessels adopted by the Council.

- (2) The Minister may, by order published in the *Gazette*, declare:

- (a) that the provisions referred to in the order are provisions, or are the provisions, of the Code as in existence on a specified date; or
- (b) that specified provisions of the Code as in existence on a specified date have been varied by the Council on a specified date and that the variations referred to in the order are the variations so made by the Council.

- (3) The Minister may, by order published in the *Gazette*, declare:

- (a) that the provisions referred to in the order are provisions, or are the provisions, of the NSCV as in existence on a specified date; or
- (b) that specified provisions of the NSCV as in existence on a specified date have been varied by the Council on a specified date and that the variations referred to in the order are the variations so made by the Council.

- (4) An order under subsection (2) or (3):

- (a) is, for all purposes, prima facie evidence of the matters declared in the order; and
- (b) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.