Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Bill 2015.*

Policy objectives and the reasons for them

In 2011, an Intergovernmental Agreement was signed by the Council of the Australian Governments that reflected the joint decision of the Commonwealth, states and territories that the Commonwealth take over the safety regulation of domestic commercial vessels.

The implementation of this agreement resulted in the Commonwealth *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*. Schedule 1 of that Act contains the Marine Safety (Domestic Commercial Vessel) National Law (the National Law). The National Law, which commenced on 1 July 2013, introduced a national system for regulating *domestic commercial vessels,* which are defined as vessels 'for use in connection with a commercial, governmental or research activity'.

As a result, safety matters for the vast majority of Queensland's *domestic commercial vessel* fleet (comprising approximately 5000 ships) have been regulated under the National Law since July 2013.

Under the Intergovernmental Agreement, it was intended that the Commonwealth regulate safety matters for the entire *domestic commercial vessel* fleet in Australia. However, there are a small number of ships that are beyond the constitutional reach of the Commonwealth. These are vessels that are owned by non-corporate entities (for example, individuals, sole traders, partnerships) and that only operate in waters within the limits of Queensland. Examples of such a vessel would be a sightseeing ferry operating on an inland lake, or fishing vessels that operate exclusively on inland waterways such as eel fishers or seafood harvesting vessels. These 'constitutional gap' vessels are currently still regulated under Queensland legislation.

To ensure the National Law applies to all *domestic commercial vessels*, including the 'constitutional gap' vessels, the Intergovernmental Agreement provides that each jurisdiction is to apply the National Law within its jurisdiction. To maintain separate state-based regulatory schemes for such a small percentage of the commercial vessel fleet would require an unnecessary duplication of administration and legislation and could result in confusion for ship

owners and operators and for enforcement officers. The objective of this Bill is, therefore, to ensure that the National Law regulates all *domestic commercial vessels* that operate in Queensland.

Achievement of the policy objective

The Bill ensures that the National Law applies to all *domestic commercial vessels* operating in Queensland, particularly those that are beyond the constitutional reach of the Commonwealth.

The provisions of the Bill are based on model application provisions prepared by the Commonwealth Parliamentary Counsel's Committee. Under this approach, the Commonwealth legislation is applied by the state jurisdictions to all *domestic commercial vessels* within their jurisdictions. The applied provisions are then 'federalised' by legislative provisions so that the law may be applied and enforced by the Commonwealth. This federalisation of the law removes the need for regulators and enforcement officers to determine whether a particular vessel is covered by the Commonwealth legislation or the applied state legislation. As a result, the Bill and the National Law facilitate a national scheme which can be administered seamlessly for all *domestic commercial vessels*.

For those Queensland vessels already covered by the National Law, the passage of this Bill will have no practical effect. The Bill will simply ensure that, in line with the Intergovernmental Agreement, the 'constitutional gap' vessels also become subject to the National Law. Transitional provisions in the Bill will ensure that those 'gap' vessels will have 12 months to comply with any new requirements, with the exact timeframe dependent on the nature of the requirement.

Alternative ways of achieving the policy objective

There are no alternative ways of achieving the policy objective other than to make the changes contained in this Bill. While the Commonwealth has enacted the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, due to constitutional limitations that statute does not provide full regulatory coverage for *domestic commercial vessels*. Therefore, complementary state legislation is required.

Estimated cost for government implementation

Implementation of the Bill will require changes to administrative systems. Any costs incurred will be met from within existing budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential fundamental legislative principle considerations are addressed below.

Legislation should have sufficient regard to the institution of Parliament – *Legislative Standards Act 1992,* section 4(2)(b)

Application of the National Law

Pursuant to the 2011 Intergovernmental Agreement, the amendments in the Bill, and in particular clause 5, will apply the National Law as a law of Queensland. In addition, clauses 6 10 and 13 apply Commonwealth legislation rather than Queensland legislation to matters relating to the interpretation, administration and enforcement of the applied provisions. For example, clause 6 provides that Queensland's *Acts Interpretation Act 1954* does not apply to the applied provisions and, instead, the Commonwealth's *Acts Interpretation Act 1901* is to be used in interpreting those provisions. These clauses are based on model provisions prepared by the Parliamentary Counsel's Committee which has developed a protocol for the drafting of national uniform legislation, including a precedent for applied national law.

As outlined above, the National Law already regulates the vast majority of ships in Queensland which fall within the national definition of a *domestic commercial vessel*. This is because the Commonwealth has constitutional power to regulate the activities of the majority of *domestic commercial vessels*. The substantive change that applying the National Law as a law of Queensland will make is that *domestic commercial vessels* that are beyond the regulatory power of the Commonwealth to regulate will become regulated by the National Law. These are ships that are owned by non-corporate entities and that only operate on inland waters.

The Bill is designed to ensure that this relatively small number of ships (approximately 5% of Queensland's commercial fleet) is regulated according to the same rules as the vast majority of *domestic commercial vessels* under the National Law. To maintain a separate state-based regulatory scheme for this small number of ships would require an unnecessary duplication of administration and legislation and could result in confusion for ship owners and operators and for enforcement officers.

The application of the National Law does, however, bring into consideration the principle that sufficient regard should be given to the institution of Parliament.

While the proposed Bill has been drafted as a result of the 2011 Intergovernmental Agreement, the Queensland Parliament retains the power to approve, reject or amend the Bill during the normal parliamentary process. In addition, clause 5(4) of the Bill provides a mechanism for Queensland to make a regulation which excludes any future amendment of the National Law from taking effect in this state. As a result, Queensland will retain the ability to control whether any changes to the National Law are to apply in this state. In accordance with established procedure, any such regulation would be subject to the scrutiny of the Parliament through the disallowance process.

Other provisions in the Bill also provide the potential for a regulation to vary the application of the Act. Clause 10(2) provides that an offence against the applied provisions is taken to be an offence against the laws of the Commonwealth and not against the laws of this State. Clause 10(3), however, states that this has effect other than as provided by a regulation made under this Act. Clause 13(3) provides a similar regulation-making power in relation to Commonwealth administrative laws applying to the applied provisions. Again, these provisions provide Queensland with an ability to modify the application of the National Law in this state

and any regulations made under these provisions will be subject to the Parliamentary disallowance process.

Applying the National Law to the *domestic commercial vessels* that are beyond the legislative power of the Commonwealth will ensure nationally-consistent regulation and enforcement of safety matters for these vessels. Given the benefits of adopting a national approach to safety regulation for *domestic commercial vessels* and in light of provisions allowing Queensland to modify certain aspects of the National Law, it is believed that sufficient regard has been given to the institution of Parliament.

Transitional regulation-making power

The application of the National Law will ensure that the regulation of safety matters for all *domestic commercial vessels* can be undertaken in a nationally-consistent manner. As noted above, the majority of *domestic commercial vessels* operating in Queensland are already regulated by the National Law and the proposed Bill will extend that regulation to the small proportion of Queensland *domestic commercial vessels* that are beyond the legislative power of the Commonwealth Government.

Provisions are required to ensure that that small proportion of vessels can be transitioned from the existing Queensland regulations across to the National Law in an appropriate manner. This transition is, in large part, achieved by provisions within the Bill or within the National Law. To ensure, however, that any additional transitional matters can be dealt with in a timely manner, it is appropriate to include a transitional regulation-making power as inserted by clause 31. The scope of this power is limited to only making regulations that are of a transitional or savings nature, that are necessary to allow or facilitate the transition from Queensland regulation to regulation under the National Law, and that relate to matters that are not adequately dealt with in the Bill or in the National Law.

It should be noted that the *Transport Operations (Marine Safety) Regulation 2004*, which is a significant component of maritime regulation in Queensland, is currently under review and, due to its staged expiry under the *Statutory Instruments Act 1992*, is currently being rewritten. Given the complexity of the legislative task of applying the National Law at the same time as rewriting this regulation, it is appropriate to include a transitional regulation-making power.

Legislation should have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992,* section 4(2)(a)

Delegation of administrative power only in appropriate cases and to appropriate persons—*Legislative Standards Act 1992*, section 4(3)(c)

Clause 8 of the Bill provides that a delegation by the National Regulator under the National Law, as it applies as a law of the Commonwealth, is taken to extend to, and have effect for the purposes of, the corresponding applied provision. As Queensland will not be developing its own schedule of delegations, this may raise the fundamental legislative principle that administrative power should only be delegated to appropriate persons.

Clause 8, however, is an important part of the national scheme as it ensures that delegates under the National Law can exercise powers in relation to all *domestic commercial vessels*. It also

removes the need for the state to develop and maintain a delegation schedule that is separate to the existing schedule for the National Law that is maintained by the National Regulator. To require Queensland to maintain a separate schedule of delegations would be contrary to the objective of moving to a nationally administered and enforced scheme.

It should also be noted that section 11 of the National Law only allows the National Regulator to delegate its powers and functions to officers and employees of an agency of the Commonwealth, a State or the Northern Territory. Further, section 11(7) provides that the National Regulator must not delegate a power or function to an officer or employee of an agency of a State or the Northern Territory without the agreement of the relevant State or Territory. While the section does allow for sub-delegation, any sub-delegate remains under the control of the delegate who, in turn, can be subject to direction from the National Regulator (see section 11(3) to 5)).

In practice, the National Regulator has delegated its functions and powers to the chief executive of the Department of Transport and Main Roads. The chief executive has sub-delegated those functions and powers to appropriately qualified persons who are employees of the department for the purpose of administering the National Law.

Issues relating to privacy

Clause 21 of the Bill provides that information held by the Department of Transport and Main Roads may be provided to the National Regulator where it is reasonably required by the Regulator to administer or perform a function under the National Law. This may raise the question of whether sufficient regard is being given to the need to protect a person's privacy.

Clause 21, however, is an important part of the national scheme legislation as it is a component of the information-sharing regime that must exist between Queensland, which will continue to regulate some matters for *domestic commercial vessels*, and the National Regulator, which will assume responsibility for regulation of safety matters for all *domestic commercial vessels* in Queensland.

The other component exists in section 11 of the *Australian Maritime Safety Authority Act 1990* (Cwlth) which allows the National Regulator to disclose information, including personal information, for a number of purposes including maritime safety, efficiency of maritime services and protection of the marine environment.

Without this information-sharing process, there would be information held by Queensland and by the National Regulator about individual vessels which could not be shared between the agencies. This would be inefficient and could impose an additional burden on vessel owners and operators to provide similar pieces of information to two separate regulators.

It is believed that sufficient regard has been given to a person's privacy in that only information necessary for the administration of the National Law is authorised to be disclosed. The amendment does not allow the disclosure of any information that is not relevant to the matters regulated under the National Law.

Clause 21 has been modelled on section 42 of the *Heavy Vehicle National Law Act 2012* and is based on standard wording for national scheme legislation.

Matters within the National Law

Background

The National Law was passed by the Commonwealth Parliament in 2012 and already applies to approximately 95% of *domestic commercial vessels* operating in Queensland. The overarching policy objective of the National Law is to provide for the consistent regulation of safety matters for *domestic commercial vessels* across Australia. This is to ensure that, irrespective of where a commercial vessel is in Australian waters, it is required to meet the same nationally-agreed safety standards. This means, for example, that those who design and build commercial vessels in one jurisdiction do not need to have the vessel re-certified for use in another jurisdiction. It also means that companies which operate nationally and have vessels in different jurisdictions do not need to deal with different regulatory requirements to manage their fleet and crew.

There are significant advantages therefore in applying the National Law in Queensland so that the remaining ships that the Commonwealth otherwise has no power to regulate come into the same system under which all other *domestic commercial vessels* are regulated in Australia.

The National Law contains a number of provisions which, when applied to the remaining *domestic commercial vessels* in Queensland, may raise issues relating to the fundamental legislative principles. These are discussed below.

Legislation should have sufficient regard to the institution of Parliament – *Legislative Standards Act 1992*, section 4(2)(b)

The National Law allows regulations to be made by the Governor-General dealing with a range of matters. These include, for example—

- matters to be considered when deciding whether a vessel is or is not a *domestic commercial vessel* (see sections 7(3)(d), (4) and (5) and 8(3));
- criteria for the National Regulator's decisions about issuing, varying, suspending or revoking particular authorities (see, for example, sections 38 and 40 to 42); and
- prescribing who is required to hold a certificate of competency (see section 58).

The National Law also allows the National Regulator to make certain Marine Orders (see section 163) and grant exemptions from the National Law (see section 143).

These instruments will not be subject to the scrutiny of the Queensland Parliament.

As noted above, however, the National Law, including the provisions outlined above, already applies to approximately 95% of Queensland's *domestic commercial vessels*. To ensure nationally-consistent administration and enforcement of safety-related matters for all domestic commercial vessels, it is essential that the national scheme in its entirety be applied to the remaining 5% of vessels. It would be inefficient and cumbersome for Queensland to legislate these matters for those 5% of vessels that are beyond the reach of the Commonwealth and would be contrary to the Intergovernmental Agreement and to the policy objectives of the National Law and the Bill.

Legislation should have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992,* section 4(2)(a)

(a) Offence provisions

The National Law contains various offence provisions. The maximum penalties for the more serious offences can include a term of imprisonment. For example, terms of imprisonment may be imposed for offences relating to:

- an act or omission by the owner of a *domestic commercial vessel* that is intended to be a risk to the safety of a person or the vessel (see section 13);
- the master of a *domestic commercial vessel* failing to render assistance to a person in distress on another vessel or in the water (see section 85); and
- an act or omission by an accredited person that contravenes a condition of their accreditation and, as a result, intentionally presents a risk to the safety of a person or a domestic commercial vessel.

Justification for the various penalty levels can be found in the Explanatory Notes to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cwlth) which state (on page 12):

> *The penalties in the Bill generally reflect the community's view that any person who has a work-related duty of care, but does not observe it, should be liable to a criminal sanction for placing another person's safety at risk. This approach is adopted in the* Work Health and Safety Act 2011 *and is in line with international practice……*
>
> *Penalties and the possibility of imprisonment in the most serious cases are a key part of achieving and maintaining a credible level of deterrence to complement other types of enforcement action, such as the issuing of notices by a marine safety inspector. The maximum penalties provided in the Bill reflect the level of seriousness of the offences and have been set at levels high enough to cover the worst examples of offence.*

(b) Immunity from prosecution – *Legislative Standards Act 1992,* section 4(3)(h)

Section 153 of the National Law provides immunity against civil and criminal liability for various persons involved in the administration of the law because of an act done, or omitted to be done, in the exercise of any power conferred on the National Regulator or on a marine safety inspector. The Explanatory Notes for the clause state (at page 78):

> *Marine safety inspectors, in particular, have a crucial role to play in the promotion of marine safety and in eliminating or minimising serious risks to marine safety. They may be required to exercise judgment, make decisions and exercise powers with limited information and in urgent circumstances.*
>
> *As a result, it is important that they and others engaged in the administration of the Bill are not deterred from exercising their skill and judgment due to fear of personal legal liability.*

This level of immunity exists in other Commonwealth maritime legislation (see section 324 of the *Navigation Act 2012* (Cwlth)) and more broadly in other Commonwealth legislation (see

section 75P of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cwlth) and section 86 of the *Classification (Publications, Films and Computer Games) Act 1995* (Cwlth)).

(c) Natural justice – *Legislative Standards Act 1992,* section 4(3)(b)

Sections 41(2), 42, 51(2), 52, 63(2) and 64 of the National Law allow various certificates to be suspended or revoked by the National Regulator without the holder of the certificate being given the opportunity to show cause as to why that action should not be taken.

Suspensions and revocations under these sections will only occur in limited circumstances. For example, sections 41(2)(a), 51(2)(a) and 63(2)(a) state that suspensions will be imposed where the National Regulator is satisfied that the suspension is necessary to:

- protect human life;
- secure safe navigation of vessels; or
- deal with an emergency involving a serious threat to the environment.

A decision to suspend or revoke a certificate under any of these sections is a reviewable decision (see section 139(g) and (i) of the National Law).

(d) Power to enter premises, and search for or seize documents or other property – *Legislative Standards Act 1992,* section 4(3)(e)

The National Law provides marine safety inspectors with various powers including—

- power to enter premises or vessels without consent or warrant (see sections 96 and 97);
- power to require production of documents and answers to questions (see section 98);
- search, seizure and other investigative powers without warrant or consent (see sections 99, 100 and 111); and
- power to detain vessels (see section 101).

In relation to these powers, page 8 of the Explanatory Notes to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cwlth) states:

> *Domestic commercial vessels are inherently mobile. The nature of the commercial activities undertaken by these vessels often means that they do not follow any predictable pattern or timetable. This means that monitoring and compliance activities need to be undertaken as and when an opportunity presents……*

The Notes go on to state:

> *The National Law Bill has been drafted consistently with the principles stipulated in* The Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers *(the Guide) developed by the Criminal Justice Division of the Attorney-General's Department.*
>
> *In addition, the National Law Bill provides for enforcement powers equivalent to those provided in current Commonwealth legislation including:*
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> - Work Health and Safety Act 2011*, Section 163 – Powers of entry;*

- Crimes Act 1913*, Section 3T – Searches without warrant in emergency situations;*
- Quarantine Act 1908*, Section 66AB – The monitoring of premises; and*
- Customs Act 1901*, Section 185 – Power to board and search etc. ships and aircraft.*

The Explanatory Notes provide significant additional justification for the various powers given to marine safety inspectors under the National Law. Specifically, in relation to the power for an inspector to sample, secure or seize items under section 100 without a warrant, the Notes state (on page 9):

> *These powers are limited to use in relation to a vessel, which because of its inherent mobility, may make obtaining a warrant impractical (for example, if the vessel is in a remote area with no mobile telephone reception) or may require that action is taken immediately to ensure that evidential material is not lost or compromised. The 72 hour statutory time limit to secure a thing, balances the possibility that the safety operation may be a significant distance from the nearest port, whilst ensuring that a person's property is not inappropriately retained.*
>
> *To ensure that the National Regulator can monitor the use of this power and the circumstances in which it is used, an inspector who exercises these powers will be required to report to the National Regulator on the exercise of the powers and the grounds for his or her belief that these powers needed to be exercised without warrant.*

In additional material provided by the then Commonwealth Minister for Infrastructure and Transport (as extracted in the Senate Standing Committee for the Scrutiny of Bills, Seventh Report of 2012, 27 June 2012 at page 277) it is stated:

> *Appropriate safeguards to ensure the lawful and proportionate use of search and entry powers without consent or warrant in limited circumstances is achieved by:*
> - *Satisfactory experience and qualification prerequisites that a marine safety inspector must satisfy prior to being appointed and authorised to exercise the compliance and enforcement powers.*
> - *These qualification and experience standards will be consistent with key elements of Public Sector Training Package (PSP04) that deals with compliance and enforcement, investigation and regulatory control. This training package is the recognised Commonwealth standard for persons exercising such powers and functions.*
> - *Safeguards such as reporting requirements including reasons for the exercise when certain compliance and enforcement powers have been exercised without consent or warrant.*

(e) Onus of proof – *Legislative Standards Act 1992,* section 4(3)(d)

Sections 147 to 149 of the National Law deal with the application of the National Law to partnerships, unincorporated associations and trusts with multiple trustees. To ensure enforceability of the National Law, the sections provide that offences that would otherwise have been committed by these entities are taken to have been committed by each partner,

member of the association's management committee and trustee respectively. No offence will be committed, however, where the relevant person can show they:

- did not know of the circumstances that constituted the contravention of the provision concerned; or
- knew of those circumstances but took all reasonable steps to correct the contravention as soon as possible after they became aware of those circumstances.

Placing this obligation on these people is appropriate as the requisite information will be peculiarly within their knowledge.

(f) Evidentiary Aids – *Legislative Standards Act 1992,* section 4(3)(d)

Sections 156 and 157 of the National Law provide a number of evidentiary aids to facilitate the process of proving a fact in court. The matters dealt with in these sections are expected to be non-contentious and, as the evidence is not stated to be conclusive, a party will have the opportunity to challenge a fact sought to be established by the evidentiary aid.

(g) Delegation of legislative power – *Legislative Standards Act 1992,* section 4(4)(a)

Section 164 of the National Law allows regulations under the Act and marine orders to incorporate material by reference. That material includes the National Standard for Commercial Vessels and the Uniform Shipping Laws Code (USLC). These documents provide the technical specifications for a range of safety matters. The National Standards are progressively replacing the USLC and are subject to approval by Transport Ministers. The ability to incorporate this material is essential to the national scheme.

(h) Right to conduct business

Section 7 of the National Law provides a definition of a *domestic commercial vessel*. The definition captures unpowered or low-powered vessels if they are used in commercial operations (for example, through a kayak hire service). Although regulated, these vessels are currently not required to be registered in Queensland. However commercial operations of these vessels owned by corporate entities are already covered by the National law and have been operating within the national system since it commenced.

To ensure a national approach to the regulation of all *domestic commercial vessels*, it is important that the Bill extend registration and other requirements under the National Law to these vessels. Importantly, these requirements will be introduced through a 12-month transitional period. To assist these non-corporate owners and operators, it is intended to adopt a zero fee in relation to certification requirements under the National Law for these vessels which also currently applies to the unpowered or low-powered vessels already covered by the National Law.

Consultation

As a national initiative, the Commonwealth was responsible for the consultation on the national reforms. Consultation on the national reforms previously undertaken by the Australian Maritime Safety Authority (AMSA) was generally positively received by the public and marine industry.

AMSA's public engagement activities included consultation on the Regulatory Plan outlining the proposed elements of the National Law Bill, a detailed discussion paper providing an overview of the legislation and the draft Bill itself.

Comments and feedback from 19 formal public submissions that AMSA received were considered and incorporated into the draft National Law Bill as appropriate. AMSA also released a report detailing the responses to these submissions.

The Department of Transport and Main Roads (the department) has written to known vessel owners and operators who will be transitioning to the national system through the application of the National Law in Queensland.

The department has also met with key stakeholders to discuss the proposed amendments. This primarily relates to safety management systems for other government departments and organisations such as the Department of Education and Training and Surf Lifesaving Queensland. Both organisations acknowledged the nature of the legislative changes and potential impact that these may have on their ships and regulatory frameworks and indicated a willingness to work with the department through these changes.

Consistency with legislation of other jurisdictions

As outlined above under the heading 'Background', the Bill is the result of a nationally agreed scheme. More specifically, the Bill is based on model application provisions developed by the Parliamentary Counsel's Committee which consists of the heads of the office of the Parliamentary Counsel for the Commonwealth, states and territories. Legislation based on this model has been introduced in New South Wales (*Marine Safety Act 1998* – Part 1A), Victoria (*Marine (Domestic Commercial Vessel National Law Application) Act 2013*), South Australia (*Marine Safety (Domestic Commercial Vessel) National Law (Application) Act 2013*), Tasmania (*Marine Safety (Domestic Commercial Vessel National Law Application) Act 2013*) and the Northern Territory (*Marine Safety (Domestic Commercial Vessel) (National Uniform Legislation) Act*).

The effect of the legislation in all these jurisdictions is to apply the Commonwealth's *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* as a law of those jurisdictions. As such, the Bill is consistent with legislation of the Commonwealth, the states and the Northern Territory.

Notes on provisions

Part 1 Preliminary

Part 1 of the Bill deals with matters of a preliminary nature. It outlines the purpose of the Bill and contains the definitions for the Bill.

1 Short Title

Clause 1 states that the Act may be cited as the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2015.*

2 Commencement

Clause 2 states that the Act commences on a day to be fixed by proclamation, enabling the commencement of the amendments at the same time as those contained in the Transport Operations (Marine Safety) and Other Legislation Amendment Bill 2015.

3 Purpose of Act

Clause 3 sets out the main purpose of the Bill, which is to adopt in Queensland a national approach to the regulation of marine safety in relation to *domestic commercial vessels*. This is achieved by

- applying the National Law as a law of Queensland; and
- making provision to enable the National Law and the applied law of Queensland to be administered on a uniform basis by the Commonwealth (and by Queensland officials as delegates of the Commonwealth) as if they constituted a single law of the Commonwealth.

The National Law already applies to the vast majority of *domestic commercial vessels* operating in Queensland waters. The Bill ensures that the National Law also applies to those vessels operating in Queensland waters which are not within the scope of the Commonwealth's powers.

The purpose of the Bill is to apply the Commonwealth legislation and then the applied provisions are 'federalised' so that the law may be applied and enforced by the Commonwealth and its agents and delegates without the need to determine whether the vessel concerned is covered by the Commonwealth legislation or the applied Queensland legislation. This approach avoids the need to legislatively identify the 'constitutional gap' vessels covered by the applied state legislation. It means that the Commonwealth law is given comprehensive and seamless application in this state.

4 Definitions

Clause 4 inserts definitions used in the Bill.

In particular, the term *applied provisions* is defined to mean the National Law that applies as a law of Queensland because of *clause 5*.

The term *Commonwealth domestic commercial vessel national law* is comprehensively defined to include all aspects of the National Law including those of a savings or transitional nature and regulations and legislative instruments in force under the Law. Such legislative instruments include subordinate instruments, known as marine orders, made under section 163 of the National Law. These orders are made by the Chief Executive Officer of the National Regulator and can be used instead of regulations to prescribe certain procedures and mandatory requirements.

Subclause (2) provides that terms used in the Act are to have the same meaning as those terms used in the National Law. The intention of this provision is to promote uniformity in the application of the National Law and consistency in its operation as a national scheme across all jurisdictions.

Part 2 The applied provisions

5 Application of Commonwealth laws as laws of this State

Clause 5 applies the National Law as a law of Queensland.

The effect of *subclause (2)* is that the applied provisions extend to those matters in relation to which Queensland may make laws whether or not the Commonwealth has a constitutional head of power to do so. This means that the National Law can apply to Queensland commercial vessels which are not otherwise within the Commonwealth's power.

Subclause (3) clarifies that subclause (2) does not operate to exclude a law of Queensland relating to marine safety that would not otherwise be excluded by the National Law. This puts beyond doubt that current Queensland laws that regulate marine safety but which are not directly affected by the National Law continue to have effect. For example, this includes provisions of the *Transport Operations (Marine Safety) Act 1994* and the *Transport Operations (Road Use Management) Act 1995* dealing with pilotage, harbour management, speed limits and prohibitions against alcohol and drug use.

Subclause (4) allows a regulation to be made that provides that the National Law applies as if amendments made to the law by the Commonwealth and specified in the regulation had not taken effect. This provides a mechanism for Queensland to make a regulation which excludes any future amendment of the National Law from taking effect in this state. As a result, Queensland will retain the ability to control whether any changes to the National Law are to apply in this state.

6 Interpretation of Commonwealth domestic commercial vessel national law

Clause 6 clarifies which interpretative Act is to apply for the interpretation of the applied provisions. In particular, it provides that the *Acts Interpretation Act 1901* of the Commonwealth applies and that the Queensland *Acts Interpretation Act 1954* does not apply. This is consistent with the approach adopted in the introduction of other national schemes.

Part 3 Functions and powers under applied provisions

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

Clause 7 provides that the National Regulator established under the National Law and other authorities and officers have the same functions and powers under the applied provisions as they have under the National Law. (Section 9 of the National Law provides that the National Regulator is the Australian Maritime Safety Authority).

8 Delegations by National Regulator

Clause 8 provides that any delegation by the National Regulator under the National Law is taken to have effect for the purposes of the corresponding provision of the applied law.

Queensland officials are currently performing functions for the National Regulator under the National Law, such as:

- assessing applications for, and issuing, certificates of survey, competence and operation;
- varying, suspending and revoking those certificates; and
- appointing marine safety inspectors.

The clause ensures that these existing delegations apply in relation to dealings with 'constitutional gap' vessels.

Part 4 Offences

9 Objects of pt 4

Clause 9 states that the object of the Part is to further the purpose of the National Law. It does this by providing that an offence against the applied provisions is to be treated as if it were an offence against the law of the Commonwealth. In addition, the clause gives examples of the purposes for which the offence is to be so treated. Some of the examples included in the section are for:

- the investigation and prosecution of offences;
- fines, penalties and forfeitures; and
- infringement notices in connection with offences.

10 Application of Commonwealth criminal laws to offences against applied provisions

Clause 10 applies the relevant Commonwealth laws as laws of Queensland in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth. In addition, the clause provides that except as provided by a regulation made under the proposed Act, an offence against the applied provisions is taken to be an offence against the laws of the Commonwealth and not an offence against the laws of Queensland.

The effect of the clause is that Commonwealth procedures apply in relation to offences under the applied provisions in the Bill. The object is to promote consistency in the enforcement of the National Law across the states and territories.

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

Clause 11 is a technical provision concerning the functions and powers conferred on Commonwealth officers or authorities because of the application of Commonwealth laws (see clause 10) in relation to an offence against the National Law. This clause provides that the functions or powers are also conferred on the officer or authority in relation to an offence against the corresponding provision of the applied provisions.

12 No double jeopardy for offences against applied provisions

Clause 12 provides that a person is not liable to be punished for an offence under the applied provisions in Queensland if the person has been punished for the same offence by the Commonwealth under the National Law.

Part 5 Administrative Laws

13 Application of Commonwealth administrative laws to applied provisions

Clause 13 applies the Commonwealth administrative laws as laws of Queensland to any matter arising in relation to the applied provisions. ***Commonwealth administrative laws*** are defined in clause 4 of the Bill to be the following:

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

Subclause (2) provides that a matter arising in relation to the applied provisions is taken to be a matter arising in relation to the laws of the Commonwealth and not of Queensland. *Subclause* (3) limits the effect of subclause (2) where provided for in a regulation made under the proposed Act.

Making the Commonwealth administrative laws apply to the applied provisions ensures consistency in the application of the applied provisions and the National Law, and more broadly, ensures consistency with other jurisdictions in the administration of the national scheme.

Subclause (4) provides that any provision of a Commonwealth administrative law applying because of the proposed section that purports to confer jurisdiction on a federal court is taken not to have that effect. This is because the proposed Act will be a Queensland law and a state cannot purport to confer judicial power on a federal court. This subclause is a technical

provision and is consistent with the High Court decision in *Re Wakim: ex parte McNally* (1999) 198 CLR 511 that a state law cannot confer jurisdiction on a federal court.

Subclause (5) is a technical provision which allows for the proper operation of the proposed Act and the review of reviewable decisions made under the National Law.

14 Functions and powers conferred on Commonwealth officers and authorities

Clause 14 provides that a function or power conferred on a Commonwealth officer or authority by a Commonwealth administrative law applying because of clause 13 is also conferred on the officer or authority in relation to the applied provisions. ***Commonwealth administrative laws*** are defined in clause 4 of the Bill to be the following:

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

The effect of this provision is to ensure that a Commonwealth officer or authority has the same powers under these administrative laws in respect of the commercial vessels that fall under the applied provisions as the officer or authority has in relation to commercial vessels which fall within the scope of the National Law.

Part 6 Fees and Fines

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

Clause 15 enables a regulation to be made that prescribes fees payable to Queensland for anything done under the National Law or the applied provisions by an officer or employee of Queensland who is acting as a delegate of the National Regulator.

This section will enable fees to be prescribed in a Queensland regulation in relation to the performance of a function under the National Law. This will facilitate the replacement of the current legislative and administrative arrangements. Under these existing arrangements, the fee for the issue of approvals under the National Law is charged under Commonwealth legislation and reimbursements are made to Queensland under a service level agreement for functions performed by Queensland officers as delegates of the National Regulator. These fees include those related to the issue of certificates of survey, competence, operation and vessel identifiers under the National Law.

The purpose of the amendment is to simply change the legislative basis for the charging of fees rather than to introduce any new fees.

16 Infringement notice fines

Clause 16 relates to payments into and refunds from Queensland's consolidated fund in respect of infringement notice fines.

Subclause (1) requires amounts paid to Queensland by the National Regulator under section 10 of the Commonwealth Act in relation to an infringement notice to be paid into the consolidated fund. (Section 10 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* applies to amounts paid to the National Regulator under an infringement notice issued by or on the recommendation of a marine safety inspector who is an officer or employee of a state or territory. Section 10 requires the National Regulator to pay an amount equivalent to those amounts to the State or Northern Territory).

Subclause (2) requires that a refund of an amount paid to Queensland by the National Regulator is payable out of the consolidated fund.

17 Fines, fees etc not otherwise payable to State

Clause 17 requires that all fees, penalties, fines and other money that, under the applied provisions, are payable by a person must be paid to the Commonwealth. The requirement does not apply to an amount ordered to be refunded to another person. However, subclause (2) provides that payment to the Commonwealth is not required where regulations made under this proposed Act require the fees to be payable to Queensland (see *clause 15*).

Part 7 Miscellaneous

18 Things done for multiple purposes

Clause 18 provides that documents issued or things done for the purpose of the applied provisions are valid even though they may have also been issued or done for the purpose of the National Law. This allows those documents or things done to serve the purposes of both statutes simultaneously.

19 Reference in Commonwealth law to provision of another law

Clause 19 is a technical provision necessary for ensuring the proper operation of the proposed Act applying the National Law as a law of Queensland. In particular, it is necessary to ensure the proper operation of proposed section 10, which deals with the application of Commonwealth criminal laws to offences against the applied provisions, and proposed section 13, which deals with the application of Commonwealth administrative laws to the applied provisions.

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

Clause 20 explains what is meant by a reference to the *domestic commercial vessel national law* and the *domestic commercial vessel national regulation* when used in Queensland legislation. References to these pieces of legislation are being inserted into Queensland's maritime legislation including the *Transport Operations (Marine Safety) Act 1994* and the *Transport Operations (Marine Pollution) Act 1995* by the Transport Operations (Marine Safety) and Other Legislation Amendment Bill 2015. These terms have been defined broadly to mean not only the National Law, but also that law as it applies as a law of Queensland and, if the context permits or requires, that law as it applies as a law of another state. This is to

ensure that there is a seamless application of the National Law and that all *domestic commercial vessels*, including those beyond the constitutional reach of the Commonwealth, are covered as vessels regulated by the National Law.

21 Provision of information and assistance by Queensland information holder

Clause 21 ensures that the chief executive or an officer or employee of the department, as specified in the definition of *Queensland information holder* in subclause (3) can give information to the National Regulator. The information may include personal information or information given in confidence provided that it is held by the department and reasonably required by the Regulator for administering the National Law. Subsection (1)(b) provides that the Regulator may be given other assistance reasonably required by the Regulator to exercise a function under the law.

This proposed section allows the disclosure of information as envisaged by sections such as 143(2)(b)(i) of the *Transport Operations (Road Use Management) Act 1995* and section 205AC(2)(b)(i) of the *Transport Operations (Marine Safety) Act 1994*.

22 Regulation-making power

Clause 22 contains a regulation-making power.

Part 8 Transitional provisions

23 Definitions for part
24 Application of transitional regulation provisions
25 Application of existing marine order about certificates of operation
26 Existing exemptions
27 Application of existing exemption about vessel identifiers
28 Application of existing exemption about certificates of survey
29 Application of s 8
30 Existing subdelegations
31 Transitional regulation-making power

*Clause*s *23* to *31* contain transitional provisions. These clauses apply the transitional provisions contained in the National Law with changes mentioned in the clauses. These changes are mainly date changes so that National Law transitional provisions can apply to the 'constitutional gap' *domestic commercial vessels* in a similar manner to how they applied to the *domestic commercial vessels* that transitioned to regulation under the Commonwealth scheme in July 2013. The transitional provisions are aimed at ensuring that affected operators can transition from regulation under the Queensland scheme to the national scheme with minimal disruption to their business.

That is, Part 8 affords owners and operators of *domestic commercial vessels* beyond the constitutional power of the Commonwealth the same sort of grandfathering and transitional arrangements that, under the national regulation and marine orders, were given to *domestic commercial vessels* that came under Commonwealth regulation on 1 July 2013.