

Queensland



TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994

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Information about this reprint

This Act is reprinted as at 2 May 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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

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

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994

[as amended by all amendments that commenced on or before 2 May 1997]

An Act about marine safety and other matters

PART 1—PRELIMINARY

Division 1—Introduction

Short title

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

Division 2—Objectives of Act

Objectives of this Act

3.(1) The overall objective of this Act is, consistent with the objectives of the *Transport Planning and Coordination Act 1994*, to provide a system that achieves an appropriate balance between—

- (a) regulating the maritime industry to ensure marine safety; and
- (b) enabling the effectiveness and efficiency of the Queensland maritime industry to be further developed.

(2) In particular, the objectives of this Act are—

- (a) to allow the Government to have a strategic overview of marine safety and related marine operational issues; and
- (b) to establish a system under which—

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- (i) marine safety and related marine operational issues can be effectively planned and efficiently managed; and
- (ii) influence can be exercised over marine safety and related marine operational issues in a way that contributes to overall transport efficiency; and
- (iii) account is taken of the need to provide adequate levels of safety with an appropriate balance between safety and cost.

(3) These objectives are to be achieved mainly by imposing general safety obligations to ensure seaworthiness and other aspects of marine safety, and allowing a general safety obligation to be discharged by complying with relevant standards or in other appropriate ways chosen by the person on whom the obligation is imposed.

(4) In particular, a ship may be taken to sufficiently comply with the general safety obligation even though a certificate of survey has not been issued for the ship.

(5) The objectives of the Act are also achieved by establishing the Marine Board as a representative body to advise the Minister.

(6) The objectives of the Act, and how they are achieved, are further explained in part 3 (How to understand this Act).

Division 3—Interpretation and basic concepts

Definitions

4. In this Act—

“accredited” ship designer, ship builder or marine surveyor means a ship designer, ship builder or marine surveyor accredited under a regulation.

“aid to navigation” has the meaning given by section 104 (Meaning of “aid to navigation”).

“approval” means—

- (a) registration of a ship; or
- (b) licensing a person as a master, crew member or pilot; or

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- (c) accreditation of an entity to license a person as a master, crew member or a pilot; or
- (d) permitting a person to operate a ship as its master or a pilot; or
- (e) accreditation of a ship designer or builder or a marine surveyor.

“building” of a ship includes altering the ship, or replacing a part of the ship, if the alteration or replacement is declared, under a regulation, to be an alteration or replacement that may affect marine safety.

“causes” includes—

- (a) for a marine incident, includes substantially contributing to the marine incident; and
- (b) for the death of, or grievous bodily harm to, a person, includes substantially contributing to the death of, or grievous bodily harm to, the person.

“certificate of compliance” has the meaning given by section 5 (Meaning of “certificate of compliance”).

“certificate of survey”, for a ship, means a certificate of survey issued for the ship under a regulation.

“Commonwealth Navigation Act” means the *Navigation Act 1912* (Cwlth).

“connected with Queensland”, for a ship, has the meaning given by section 6 (Meaning of ship “connected with Queensland”).

“coordination plan” means the Transport Coordination Plan developed under the *Transport Planning and Coordination Act 1994*.

“grievous bodily harm” has the meaning given by the Criminal Code.

“harbour master” means a person who is appointed under this Act as a harbour master.

“interstate voyage” has the meaning given by the Commonwealth Navigation Act.

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

“marine incident” has the meaning given by section 123 (What is a marine incident).

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“master” has the meaning given by section 7 (Meaning of “master”).

“obstruct” includes hinder, resist and attempt to obstruct.

“operation” of a ship by an owner has the meaning given by section 8 (Meaning of “operates” a ship).

“overseas voyage” has the meaning given by the Commonwealth Navigation Act.

“owner” of a ship has the meaning given by section 9 (Meaning of “owner”).

“person in control” includes—

- (a) for a ship—the ship’s master or the person who appears to be the ship’s master; and
- (b) for a vehicle—the vehicle’s driver or the person who appears to be the vehicle’s driver.

“pilot” means a person licensed under a regulation as a pilot and who, when on board a ship, has the conduct of it even though the person does not belong to the ship.

“pilotage area” means an area of Queensland waters that is declared under this Act to be a pilotage area.

“place” includes land and premises, but does not include a ship or vehicle.

“port” has the same meaning as in the *Transport Infrastructure Act 1994*.

“premises” includes—

- (a) a building or other structure or part of a building or other structure; and
- (b) land where a building or other structure is situated.

“Queensland intrastate voyage” means a voyage beginning or ending in Queensland waters, other than an interstate or overseas voyage.

“set up” an aid to navigation includes—

- (a) building, erecting or placing the aid; and
- (b) adding to, altering or removing the aid; and
- (c) changing its character or the way it exhibits its lights; and

(d) maintaining the aid.

“**ship**” means a ship within the meaning given by section 10 (Meaning of “ship”), and includes the ship’s equipment.

“**shipping inspector**” means a person who is appointed under this Act as a shipping inspector, and includes a harbour master.

“**standard**” includes an interim standard.

“**vehicle**” includes an aircraft, but does not include a ship.

Meaning of “certificate of compliance”

5.(1) A “**certificate of compliance**” for a ship is a certificate issued for the ship, or a part of the ship, under a regulation by an accredited ship designer or builder or marine surveyor.

(2) A certificate of compliance issued for a ship, or a part of a ship, by an accredited ship designer or builder or marine surveyor must include a declaration to the effect of the appropriate declaration prescribed by regulation about the ship’s seaworthiness.

(3) A regulation may require or permit a certificate of compliance issued for a ship, or a part of a ship, to deal with other issues about the ship’s condition that affects marine safety, including, for example, a declaration about compliance with specified standards and specified provisions of specified standards.

Meaning of ship “connected with Queensland”

6. A ship is “**connected with Queensland**” if—

- (a) it is registered under the *Shipping Registration Act 1981* (Cwlth) with a home port in Queensland; or
- (b) it is, or is required to be, registered or licensed under this or another Act; or
- (c) it is owned or chartered by—
 - (i) an individual whose place of residence, or principal place of residence, is in Queensland; or
 - (ii) a person whose place of business, or principal place of

business, is in Queensland; or

- (iii) a person whose principal place of business for managing the ship's operations is in Queensland; or
- (d) it is a ship declared by regulation to be a ship connected with Queensland.

Meaning of “master”

7.(1) The master of a ship is the person having command or charge of the ship.

(2) A pilot having the conduct of a ship, but not belonging to the ship, is not the master of the ship.

Meaning of “operates” a ship

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

Meaning of “owner”

9.(1) The **“owner”** of a ship is the person who owns the ship, whether or not the person is registered as the ship's owner.

(2) The **“owner”** of a ship includes a person who—

- (a) exercises, or purports to exercise, powers of the owner; and
- (b) operates the ship or causes or allows it to be operated by someone else.

Example 1—

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

Example 2—

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

Example 3—

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

Meaning of “ship”

10.(1) A “ship” is any kind of boat or other vessel used or, for a boat or other vessel being built, intended to be used, in navigation by water or for any other purpose on water.

(2) Without limiting subsection (1), a “ship” includes a boat or other vessel—

- (a) whatever its size; and
- (b) however it is propelled or moved.

(3) A “ship” includes, for example—

- (a) a barge, lighter or other floating vessel; and
- (b) a hovercraft or other surface effect craft.

(4) A “ship” does not include a vessel declared by regulation not to be a ship.

(5) A regulation may provide that a ship includes an aircraft when it is on water or is taking off, or landing on, water.

(6) Except as provided by a regulation under subsection (5), a ship does not include an aircraft.

Division 4—Application of Act**General application of Act to ships**

11.(1) This Act applies to the following ships—

- (a) all ships connected with Queensland, wherever they may be;
- (b) all ships in a pilotage area or port;
- (c) all ships on Queensland intrastate voyages;
- (d) all ships on interstate voyages while they are in Queensland

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waters;

- (e) all ships on overseas voyages while they are in Queensland waters.

(2) Subsection (1) is subject to this division.

(3) For the purposes of this section, a ship is taken to be on a voyage from when it gets under way for the voyage until it gets under way for another voyage.

Relationship with Commonwealth Navigation Act generally

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

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

Example—

Section 2(1) of the Commonwealth Navigation Act provides as follows—

‘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;
- (c) an inland waterways vessel; or
- (d) a pleasure craft;

or in relation to its owner, master or crew.’

Section 258(2A) to (2C) of the Commonwealth Navigation Act provides as follows—

‘(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

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(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).’

Section 2 of the *Queensland Marine (Prevention of Collisions) Regulation 1992* made under the *Queensland Marine Act 1958* provides as follows—

‘2. The Schedule to section 16 of the Uniform Shipping Laws Code (Commonwealth) applies to all vessels in Queensland waters, with all necessary modifications and any prescribed modifications, as if the Schedule were a regulation made under the Act.’

The Queensland regulation is a State law giving effect to the Prevention of Collisions Convention in relation to vessels in Queensland waters. Section 258(2C) of the Commonwealth Navigation Act, therefore, applies to the Queensland regulation. Because of the operation of the Commonwealth provisions, the Queensland regulation rather than the Commonwealth Navigation Act gives effect to the Convention in relation to vessels in Queensland waters. It is intended that a similar result should be achieved under this Act.

Aids to navigation—relationship with Commonwealth Acts

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

Marine incidents required to be reported under Commonwealth Navigation Act

14.(1) This Act does not apply to a marine incident if the incident is required to be reported under the Commonwealth Navigation Act.

(2) This section does not limit section 12 (Relationship with Commonwealth Navigation Act generally).

Section 11 subject to certain provisions

15.(1) The provisions of this Act to which section 11 (General application of Act to ships) is subject include the following provisions—

- section 55 (Application) (that deals with the application of part 5 (Registration, licensing, permits and accreditation))
- section 98 (Application of part) (that deals with the application of part 8 (Pilots))
- section 187 (Application of division) (that deals with the application of part 14 (Orderly control over ships), division 2 (Passenger carrying ships)).

(2) Section 11 is also subject to a regulation that expressly excludes the application of this section, in whole or in part.

Defence ships

16.(1) This Act does not apply to a ship belonging to—

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

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

*Division 5—Operation of Act***Act binds all persons**

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

Exemption of person or ship from Act

18.(1) A regulation may exempt a person or ship from this Act or any of its provisions.

(2) The exemption may be given on specified conditions.

(3) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

Exempting of person or ship from regulatory provision

18A.(1) The chief executive may exempt a person or ship from a provision of a regulation or a speed limit fixed under section 206A (a “**regulatory provision**”).

(2) The chief executive must consider all relevant matters in deciding whether or not to give an exemption, including, for example, the following—

- (a) whether the regulatory provision has been substantially complied with;
- (b) whether compliance with the regulatory provision is unnecessary in the particular circumstances;
- (c) whether the action taken or proposed to be taken for the matter that is the subject of the exemption is as effective as, or more effective than, compliance with the regulatory provision.

(3) However, the chief executive may give an exemption only if the chief executive is satisfied giving it will not adversely affect marine safety or the effectiveness and efficiency of the Queensland maritime industry.

(4) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

(5) The chief executive must, as soon as is practicable after giving an exemption, give notice of it in the gazette.

(6) The notice must state the following—

- (a) the person or ship the exemption is given for;
- (b) the regulatory provision from which the exemption is given;
- (c) any conditions on which the exemption is given;
- (d) any other details the chief executive considers relevant.

(7) The *Statutory Instruments Act 1992*, sections 24 to 26 apply to an exemption as if it were a regulation.

(8) A regulation may regulate the giving of an exemption.

PART 2—MARINE SAFETY STRATEGIES

Division 1—Development and approval of strategies

Development of marine safety strategies

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

(2) In developing marine safety strategies, the chief executive must take reasonable steps to engage in public consultation.

(3) The Minister may, at any time, direct the chief executive to prepare new marine safety strategies for the Minister's approval or to amend marine safety strategies in the way the Minister directs.

(4) The Minister may approve marine safety strategies that are submitted for approval or require the chief executive to amend the strategies in the way the Minister directs.

Contents of marine safety strategies

20.(1) Marine safety strategies must include—

- (a) a statement of the specific objectives sought to be achieved; and
- (b) proposals for the provision of marine safety and related marine operational initiatives; and
- (c) investment criteria for deciding priorities for government supported marine safety and related marine operational initiatives and options for financing the priorities; and

- (d) appropriate performance indicators for deciding whether, and to what extent, the objectives of the strategies have been achieved.

(2) Marine safety strategies must aim to provide an adequate framework for coordinating and integrating the provision of transport services between the different transport modes.

(3) Marine safety strategies must take account of agreements or arrangements between the State and other States and Territories and the Commonwealth, and Australia's international obligations, about marine safety.

Tabling of marine safety strategies

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

Division 2—Obligations of marine safety strategies

Objective of division

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

Obligations about marine safety

23. The chief executive must ensure that—

- (a) marine safety strategies are developed in a way that—
- (i) takes into account national and international benchmarks and international best practice; and
 - (ii) promotes, within overall transport objectives, the safe transport of persons and goods; and
 - (iii) encourages efficient and competitive behaviour in the Queensland marine industry; and
- (b) the provision and operation of all marine safety infrastructure and

services for which the State is responsible is designed to achieve—

- (i) efficiency; and
- (ii) affordable quality; and
- (iii) cost effectiveness.

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

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

Division 3—Implementation of safety strategies

Development of marine safety implementation programs

25.(1) The chief executive must, each year, develop for the Minister's approval marine safety implementation programs for the year and for 1 or more later years.

(2) Marine safety implementation programs must include—

- (a) a program of projects, and policies and financial provisions, for implementing marine safety strategies; and
- (b) performance targets for marine safety.

(3) Marine safety implementation programs may include proposals to spend amounts on programs other than marine safety if the spending would contribute to the effectiveness and efficiency of the Queensland marine industry.

(4) In developing marine safety implementation programs, the chief executive must take reasonable steps to consult with port authorities, local governments and sectors of the maritime industry that, in the chief executive's opinion, would be affected by the programs.

(5) Marine safety implementation programs are to be made publicly available in the way decided by the Minister.

(6) The Minister may at any time direct the chief executive to amend

marine safety implementation programs.

(7) The Minister may approve marine safety implementation programs that are submitted for approval or require the chief executive to amend the programs in the way the Minister directs.

Consistency with marine safety strategies

26.(1) Subject to directions of the Minister, marine safety implementation programs must be consistent with marine safety strategies.

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

Report on operation of marine safety implementation programs

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

PART 3—HOW TO UNDERSTAND THIS ACT

To which ships does this Act apply

28.(1) The power to legislate for ships is shared between the Commonwealth and the States and Territories.

(2) As a general rule, this Act does not apply to a ship to the extent to which the Commonwealth Navigation Act applies to the ship.¹

(3) The application of the Commonwealth Navigation Act to ships varies throughout the Act depending on the subject matter of the provisions

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

concerned.²

(4) Section 11(1) (General application of Act to ships) provides a general statement of the ships to which this Act applies.³

(5) This general statement is, however, subject to the application of the Commonwealth Navigation Act and certain provisions of the Act and regulations.

(6) Section 15 (Section 11 subject to certain provisions) specifies the main exceptions to the general statement.⁴

Achieving an appropriate balance between safety and cost

29.(1) This Act is about marine safety.

(2) Even though it is possible to regulate to achieve the highest level of safety, this would ignore the impact of the regulation on the effectiveness and efficiency on the Queensland maritime industry.

(3) Therefore, this Act establishes a system to achieve an appropriate balance between safety and cost.

What is the system that is established?

30.(1) The Act imposes general obligations for safety on the following people in the maritime industry—

- ship designers
- ship builders
- marine surveyors
- ship owners (including operators)

² Section 2(1) of the Commonwealth Navigation Act is the general application provision of that Act. The provision is set out in the example to section 12. The example illustrates the complexity of the application of the Commonwealth Navigation Act.

³ In general terms, these are ships with a sufficient ownership, operational or registration connection with Queensland, ships in Queensland pilotage areas, ports and waters and ships on Queensland intrastate voyages.

⁴ See also section 16 (Defence ships).

- ship masters and crew
- pilots.

(2) These general safety obligations are generally intended to be performance based rather than prescriptive and to allow people to find more cost efficient ways of achieving safety.

(3) Thus, for example, to establish compliance with a general safety obligation about the way a ship is built and enable a ship to be registered, some people may choose to rely on a certificate of compliance issued for the ship by an appropriately accredited person.

(4) Other people may, however, prefer to have a ship surveyed and to obtain a certificate of survey for a definite time.

(5) To allow a choice to be made between the 2 approaches, the Act provides, under the regulations, for the issue of both certificates of compliance and certificates of survey.

What is a standard

31.(1) Standards will help people to understand the general safety obligations.

(2) Standards may deal with most matters about marine safety and issues affecting marine safety that may be dealt with by regulation, including, for example, the building, crewing and operation of ships and cargo handling.

(3) However, a standard may not prescribe offences, fees or charges.

(4) Standards are made by the chief executive and approved by the Governor in Council.

(5) The chief executive must go through a consultation process before a standard can be approved, including seeking the advice of the Marine Board.⁵

(6) This consultation process allows people in the maritime industry to comment on a standard and make suggestions for changes, including changes that may result in a more effective and efficient maritime industry.

⁵ The Marine Board is established by part 10 (Marine Board).

What happens if a person does not comply with a relevant standard

32.(1) If a person does not comply with a relevant standard, this may establish noncompliance with a general safety obligation.

(2) However, the court may be satisfied that the ship was safe even though the standard was not complied with.⁶

Example—

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

What happens if a ship has a certificate of compliance or survey

33. A certificate of compliance or certificate of survey for a ship issued under this Act or by another recognised authority may be used to establish that a general safety obligation has been complied with in whole or part.⁷

What mechanisms ensure safety

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

- (a) certain key groups of people need to be licensed or accredited under the Act and will be regulated under the licensing or accreditation system;
- (b) accredited ship designers and builders and marine surveyors are responsible for ensuring the correctness of important safety aspects of certificates of compliance that they issue;
- (c) owners and masters of ships are responsible for ensuring that ships are safe;
- (d) owners, masters, pilots, crew members and other persons involved with the operation of ships are responsible for ensuring

⁶ See section 42 (Relationship between regulatory provisions and general safety obligations about the condition of ships) for a fuller statement.

⁷ See section 42(3)(a).

- that ships are operated safely;
- (e) ships must have the required safety equipment;
 - (f) certain ships need to be registered;
 - (g) shipping inspectors are to be appointed and have the power to monitor ships to see if they are safe and are operated safely;
 - (h) whenever a significant marine incident happens, it must be investigated by a shipping inspector and may be the subject of a reference by the Minister to a board of inquiry established for the incident;
 - (i) the chief executive may suspend or cancel an approval;
 - (j) the maximum penalties are substantial if a person is found guilty of contravening the Act.⁸

How is safety in Queensland waters achieved

35.(1) Some Queensland waters need to be controlled to ensure safety.

(2) The Act, therefore, allows areas of Queensland waters to be declared as pilotage areas.

(3) Control in pilotage areas is achieved by requiring certain ships to use a pilot when the ship is entering, leaving or navigating within a pilotage area.

(4) Control is also achieved by appointing harbour masters and authorising them to give directions about ships and their navigation.

(5) Part 7 (Harbour masters) sets out the powers of harbour masters.

⁸ If a provision of this Act provides that the maximum penalty for an offence may be a fine or imprisonment, the court may impose both (*Penalties and Sentences Act 1992*, section 180A). If a body corporate is convicted of an offence against this Act, the court may impose a fine of 5 times the maximum fine that could be imposed on an individual (*Penalties and Sentences Act 1992*, section 181B). Thus, for example, the maximum fine that could be imposed on summary conviction on a body corporate ship owner for an offence against section 41 (General safety obligation of ship owners and masters about condition of ships) is 2 500 penalty units or \$150 000. If the contravention causes or substantially contributes to death or grievous bodily harm, the maximum fine on conviction on indictment is 25 000 penalty units or \$1 500 000).

How are harbour masters and shipping inspectors accountable

36.(1) In exercising a power, harbour masters are accountable to the chief executive under the *Public Service Act 1996* and must comply with part 7 (Harbour masters).

(2) In exercising a power, shipping inspectors are accountable to the chief executive under the *Public Service Act 1996* and must comply with part 13 (Shipping inspectors).

(3) Harbour masters and shipping inspectors are also subject to controls under other laws, including, for example, the *Judicial Review Act 1991*.

How is the chief executive accountable

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

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

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

Example—

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

Operation of part

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

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

Example—

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

PART 4—GENERAL SAFETY OBLIGATIONS AND STANDARDS

Division 1—General safety obligations

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

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

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

(2) However, if—

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

the person commits an indictable offence and is liable to a maximum penalty of 5 000 penalty units or imprisonment for 2 years.

General safety obligation of ship owners and masters about condition of ships

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

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

(2) However, if the contravention of subsection (1) causes a marine incident involving the death of, or grievous bodily harm to, a person, the owner and master commit an indictable offence and are liable to a maximum penalty of 5 000 penalty units or imprisonment for 2 years.

(3) For the purposes of this section, a ship is safe if it is seaworthy, and is appropriately equipped and crewed, to meet the ordinary perils of the voyage on which the ship is proceeding or about to proceed.

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

42.(1) In this section—

“certificate of compliance” includes an equivalent certificate issued under a law of the Commonwealth, another State.

“general safety provision” means either of the following sections—

- section 40 (General safety obligation of ship designers and builders and marine surveyors about condition of ships)
- section 41 (General safety obligation of ship owners and masters about condition of ships).

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

(2) This section applies if—

- (a) it is claimed in a proceeding that a person contravened a safety provision because of the condition of a ship or its equipping or crewing (the **“safety issue”**); and
- (b) a regulatory provision provided a way of dealing with the safety issue to achieve safety.

(3) If it is proved that the safety issue was not dealt with in the way provided by the regulatory provision, the general safety provision is taken to have been contravened unless the court is satisfied that—

- (a) it was reasonable for the person to rely on either of the following to satisfy compliance with the general safety provision—
 - (i) a certificate of survey or a certificate of compliance issued by someone other than the person that was in force for the ship and covered the safety issue (completely or partly);
 - (ii) an approval of the design of the ship or part given by the chief executive under part 5, division 5; or
- (b) the general safety provision was complied with, despite noncompliance with the regulatory provision.

(4) In deciding whether the general safety provision had been complied

with despite noncompliance with the regulatory provision, the court must have regard to the objectives of this Act.

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

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

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

(2) Without limiting subsection (1), a person causes a ship to be operated unsafely if the person causes the ship to be operated in a way that—

- (a) causes a marine incident; or
- (b) contravenes—
 - (i) conditions of the ship's registration about safety; or
 - (ii) a provision of a regulation that is declared by a regulation to be a provision to which this section applies.

(3) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, a person, the owner, master, pilot, crew member or other person commits an indictable offence and is liable to a maximum penalty of 5 000 penalty units or imprisonment for 2 years.

(4) A person does not contravene this section because of subsection (2)(a) if the only basis for holding that a marine incident has been caused is lawful damage to, or danger of lawful damage to, property of which the person is the sole owner.

(5) In this section—

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

Safety equipment obligation

44.(1) The owner or master of a ship must not operate a ship if—

- (a) the ship is required by a regulation to be equipped with safety equipment; and

(b) the ship is not equipped with the safety equipment.

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

(2) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, a person, the owner or master commits an indictable offence and is liable to a maximum penalty of 5 000 penalty units or imprisonment for 2 years.

(3) In this section—

“**safety equipment**” means equipment that is declared by a regulation to be safety equipment to which this section applies.

Division 2—Standards

Standards

45.(1) The chief executive may make standards under this Act.

(2) A standard is subordinate legislation.

(3) A standard is not effective until it is approved by the Governor in Council.

Contents of standard

46.(1) A standard may provide for any matter about which a regulation may be made.⁹

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

Notice of proposal to prepare draft standard

47.(1) Before making a standard about a matter, the chief executive must give public notice of a proposal to prepare a draft standard about the matter.

(2) The notice must be published—

(a) once a week for 2 consecutive weeks in a newspaper circulating generally throughout the State; and

⁹ See section 208 (Marine safety regulations—generally).

(b) if the standard applies only to a particular area of the State—in a newspaper circulating generally in the area.

(3) If the proposal relates only to an aspect or part of the maritime industry, the notice must also specify the aspect or part.

(4) The notice must—

(a) invite submissions on the proposal from public authorities, industry, interested groups and persons, and the public; and

(b) specify a day, not earlier than 30 days from the first publication of the notice in the newspaper mentioned in subsection (2)(a), by which submissions may be made to the chief executive.

(5) The chief executive must also inform the Marine Board of the draft standard and ask for its advice on the draft standard.

Preparation of draft standard

48.(1) In preparing the draft standard mentioned in a proposal published under section 47 (Notice of proposal to prepare draft standard), the chief executive must consider any advice given by the Marine Board and all submissions properly made to the chief executive on the proposal.

(2) The chief executive must also ensure that the draft standard—

(a) sets out its purposes; and

(b) takes into account national and international benchmarks and best practices.

Notice of draft standard

49.(1) When a draft standard has been prepared, the chief executive must give public notice of the draft standard.

(2) The notice must be published—

(a) once a week for 2 consecutive weeks in a newspaper circulating generally throughout the State; and

(b) if the standard applies only to a particular area of the State—in a newspaper circulating generally in the area.

(3) The notice must—

- (a) specify the addresses where copies of the draft standard may be inspected and, on payment of the fee prescribed by regulation, purchased; and
- (b) invite submissions on the draft standard from public authorities, industry, interested groups and persons, and the public; and
- (c) specify a day, not earlier than 30 days from the first publication of the notice in the newspaper mentioned in subsection (2)(a), by which submissions may be made to the chief executive.

(4) The chief executive must also inform the Marine Board of the draft standard and ask for its advice on the draft standard.

Making of standard

50.(1) The chief executive—

- (a) must consider any advice given by the Marine Board and all submissions properly made to the chief executive on the draft standard; and
- (b) must have regard to the advice and submissions in making the standard for submission to the Governor in Council for approval.

(2) No further notice under section 49 (Notice of draft standard) or consideration by the Marine Board is required even if the chief executive changes the draft standard after considering the advice and submissions.

Interim standards

51.(1) If the chief executive is satisfied that, for reasons of urgency, it is necessary or desirable to make a standard on an interim basis, the chief executive may make the standard even though the following sections have not been complied with—

- section 47 (Notice of proposal to prepare draft standard)
- section 48 (Preparation of draft standard)
- section 49 (Notice of draft standard)
- section 50 (Making of standard).

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

Regulations prevail over standards

53.(1) If there is any inconsistency between a regulation and a standard, the regulation prevails to the extent of the inconsistency.

(2) Subsection (1) applies whether the standard was made before or after the regulation.

Review of standards

54.(1) The chief executive must review each standard within 7 years after its approval.

(2) The procedures applying to the preparation and approval of standards under this division apply to the review of standards with any necessary changes and any changes prescribed by regulation.

PART 5—REGISTRATION, LICENSING, PERMITS AND ACCREDITATION

Division 1—Application of part

Application

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

Division 2—Registration of ships

Regulation may require registration of ship

56. A regulation may require the owner of a ship to register the ship.

Contravention of registration obligations

57.(1) The owner or master of a ship must not operate the ship if the ship is required to be registered, but is not registered.

(2) If a ship is registered on conditions, the owner or master must not operate it in contravention of the conditions.

Maximum penalty—200 penalty units.

Registration, amendment, renewal and transfer etc.

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

Cancellation, suspension and amendment of registration

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

*Division 3—Licensing of masters, crew members and pilots***Regulation may require licences**

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

- (a) to operate a ship as its master; or
- (b) to act as a crew member of a ship; or
- (c) to have the conduct of a ship as its pilot.

(2) However, the only persons who may hold a licence to have the conduct of a ship as its pilot are—

- (a) officers and employees of the department; or
- (b) agents and employees of an entity prescribed under the regulations.

Operation of ship as master etc. without required licence

61.(1) A person must not operate a ship as its master if the person is required to be licensed, but is not appropriately licensed.

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

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

Maximum penalty—40 penalty units.

Grant, amendment and renewal of licences

62.(1) The grant, amendment or renewal of a licence may be applied for, and granted or refused, as prescribed by regulation.

(2) A regulation may make provision for licences to be granted, amended or renewed—

(a) by the chief executive; or

(b) by an entity accredited, under the regulation, by the chief executive.

(3) A regulation may also make provision for the chief executive—

(a) to conduct examinations; or

(b) to approve an entity to conduct examinations;

to establish whether a person meets a requirement under the regulations.

Cancellation, suspension and amendment of licences

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

Division 4—Accreditation of ship designers, ship builders and marine surveyors

Object of division

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

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

Regulation may provide for accreditation

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

Design of ships

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

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

Building of ships

66A. A person must not issue a certificate of compliance for the building of a ship or part of a ship unless the person is a ship builder who is accredited to issue the certificate.

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

Restriction on building of ships

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

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

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

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

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

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

Surveying of ships

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

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

Grant, amendment or renewal of accreditation

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

Cancellation, suspension and amendment of accreditation

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

*Division 5—Other provisions about ship design and survey***Chief executive may approve ship design**

70A.(1) The chief executive may approve the design of a ship or a part of a ship.

(2) However, the chief executive must not approve a design for a ship or part unless the chief executive is satisfied—

- (a) the design meets the requirements of any standard about ship design made under part 4, division 2 and applying to the ship; and
- (b) the ship or part is designed to be seaworthy under the conditions under which it is to be used.

Statements in certificate of survey

70B.(1) The chief executive may, in a certificate of survey for a ship, make a statement about the design or survey of the ship the chief executive considers appropriate.

Example—

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

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

Protection from liability

70C.(1) An officer of the department is not civilly liable for an act or omission done honestly and without negligence under this division.

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

PART 6—PILOTAGE AREAS**Declaration and closing of pilotage areas**

71. A regulation may—

- (a) declare an area of Queensland waters to be a pilotage area; or
- (b) close a pilotage area or a part of a pilotage area.

Harbour master may permit ship navigation in closed pilotage area

72.(1) If a pilotage area or part of a pilotage area is closed by regulation, a harbour master may permit a person to—

- (a) cause a ship to enter, leave or navigate in the area or part; or
- (b) anchor, berth or moor a ship in the area or part.

(2) If it is not practicable for the harbour master to give the person a written permission under subsection (1), the harbour master must make a written note of the permission and its details.

Failure to comply with closure of pilotage area

73.(1) This section applies if a regulation closes a pilotage area or part of a pilotage area.

(2) A person must not, without the permission of a harbour master—

- (a) cause a ship to enter, leave or navigate in the pilotage area or part, unless the person has a reasonable excuse; or
- (b) anchor, berth or moor a ship in the pilotage area or part, unless

the person has a reasonable excuse.

Maximum penalty—200 penalty units.

PART 7—HARBOUR MASTERS

Division 1—General

Appointment of harbour masters

74.(1) The chief executive may appoint an officer or employee of the department to be a harbour master.

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

Only qualified persons may be appointed as harbour masters

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

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

Limitations on powers of a harbour master

76. The powers of a harbour master may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by notice of the chief executive given to the harbour master.

Harbour master to consult with port authority

77.(1) Before a harbour master exercises a power that may affect the functions of a port authority, the harbour master must consult with the port authority to the extent reasonably practicable.

(2) Failure to comply with subsection (1) does not affect the validity of the exercise of the power.

End of appointment

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

Delegation by harbour master

79. A harbour master may delegate the harbour master's powers to—

- (a) an officer or employee of the public service who the harbour master is satisfied has the necessary expertise or experience to exercise the powers; or
- (b) a shipping inspector; or
- (c) an officer or employee of a port authority; or
- (d) a police officer; or
- (e) someone else prescribed by regulation.

Identity cards

80.(1) The chief executive must give an identity card to each harbour master.

(2) A harbour master who delegates powers to a person, other than a shipping inspector, must give an identity card to the person.

(3) The identity card of a harbour master or a harbour master's delegate must—

- (a) contain a photograph of the harbour master or delegate; and
- (b) be in a form approved by the chief executive; and

(c) be signed by the harbour master or delegate.

(4) A person who ceases to be a harbour master or delegate must return the person's identity card to the chief executive as soon as is practicable after the person ceases to be a harbour master or delegate, unless the person has a reasonable excuse for not returning it.

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

Proof of authority

81.(1) A harbour master must display the harbour master's identity card for inspection by a person if the harbour master, in person, gives a direction to the person or exercises another power in relation to the person.

(2) If, for any reason, it is not practicable to comply with subsection (1), the harbour master must produce the identity card for inspection by the person at the first reasonable opportunity.

(3) If a harbour master gives a written direction to a person, the written direction must be on letterhead approved by the chief executive.

(4) If a harbour master gives a direction to a person by radio, megaphone or another form of distance communication, the harbour master must identify himself or herself as a harbour master.

Protection from liability

82.(1) A harbour master is not civilly liable for an act or omission done honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to a harbour master, the liability attaches instead to the State.

Harbour masters to give notice of damage

83.(1) A harbour master who, in the exercise of a power under this part, damages anything must promptly give written notice of the particulars of the damage.

(2) The notice must be given—

(a) if the thing is a ship or is on a ship—to the ship's master; or

(b) in any other case—to the person who appears to the harbour master to be the owner of the thing.

(3) If, for any reason, it is not practicable to comply with subsection (2), the harbour master must—

(a) leave the notice on the thing that is damaged; and

(b) ensure the notice is left in a reasonably secure way in a conspicuous position.

Impersonation of harbour master

84. A person must not pretend to be a harbour master.

Maximum penalty—40 penalty units.

Obstruction of harbour master

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

Maximum penalty—200 penalty units.

Division 2—Powers of harbour masters

Subdivision 1—Powers of direction

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

86.(1) A harbour master may give a direction under this subdivision to a person only if the harbour master considers it necessary to give the direction to the person to ensure safety.

(2) In giving the direction, the harbour master must have regard to the need to ensure the effectiveness and efficiency of the Queensland maritime industry.

(3) A direction may be given to a crew member of a ship if it is not possible to give the direction to the master of the ship.

(4) A notice given to a crew member of a ship is taken to have been given to the master of the ship.

Power of Minister to require directions

87.(1) The Minister may ask the chief executive to require a harbour master to give a particular direction under this subdivision.

(2) Section 86(1) and (2) (General limitation on harbour master's power to give directions under subdivision) does not apply to the giving of the particular direction by a harbour master.

(3) A request may only be made by the Minister if the Minister is satisfied that exceptional circumstances exist to justify the Minister's intervention in the public interest.

(4) If the Minister makes a request under this section, the request must be—

- (a) notified in the gazette as soon as practicable after it is made; and
- (b) tabled in the Legislative Assembly within 14 days after it is given.

Direction to master about operation of ship

88.(1) A harbour master may direct the master of a ship to navigate or otherwise operate the ship in a specified way, including, for example—

- (a) not to cause the ship to enter a pilotage area; or
- (b) to cause the ship to enter a pilotage area in a specified way; or
- (c) to navigate the ship in a pilotage area in a specified way; or
- (d) to anchor, berth or moor the ship at a specified place in a pilotage area; or
- (e) to move the ship from an anchorage, berth or mooring in a pilotage area; or
- (f) to cause the ship to leave a pilotage area or to leave a pilotage area in a specified way.

(2) A person must not contravene a direction under subsection (1),

unless the person has a reasonable excuse for the contravention.

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

Direction to person in charge of a place

89.(1) A harbour master may direct the person in charge of a place in, or adjacent to, a pilotage area—

- (a) to allow a ship to be berthed at the place or moved from the place;
or
- (b) to allow access through the place to and from the ship.

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

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

Direction to person carrying out works

90.(1) A harbour master may direct a person who is carrying out construction work in or near a pilotage area to light or mark the works in a specified way.

(2) The direction may specify when the action is to be taken.

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

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

Direction to person about obstruction

91.(1) A harbour master may direct a person, who is responsible for a buoy, mooring or anything else that is obstructing, or may obstruct, navigation in or near the pilotage area, to remove it.

(2) The direction may specify how, when and to where the buoy, mooring or other thing is to be moved.

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

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

Direction to person to put out certain lights etc.

92.(1) This section applies if a harbour master believes on reasonable grounds that a light, sign, signal, electrical or radio installation or equipment or anything else (a “**source of interference**”) in or near a pilotage area—

- (a) may be or has been mistaken for, may interfere or is interfering with, or may otherwise affect or is otherwise affecting the proper operation of, an aid to navigation; or
- (b) may otherwise affect the safe operation of ships.

(2) The harbour master may direct the following persons to put out, remove or screen the source of interference, or to take other specified action in relation to the source of interference—

- (a) the owner or occupier of the place where the source of interference is situated;
- (b) the person the harbour master believes, on reasonable grounds, owns or is responsible for the source of interference.

(3) The direction may specify how and when the action is to be taken.

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

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

Subdivision 2—Other powers**Harbour master may carry out direction**

93.(1) This section applies if a person has not complied with a direction given to the person by a harbour master under subdivision 1 (Powers of direction).

(2) This section also applies if—

- (a) it appears to a harbour master that there is no-one to whom a direction under subdivision 1 may be given; and
- (b) the harbour master is satisfied on reasonable grounds that the harbour master must act urgently without giving the direction.

(3) The harbour master may, to the extent necessary to ensure safety as mentioned in section 86(1) (General limitation on harbour master's power to give directions under subdivision), carry out the direction or proposed direction.

(4) Without limiting subsection (3), the harbour master may—

- (a) board a ship and operate it, including, for example, by moving or navigating it; or
- (b) enter or remain in a place in, or adjacent to, a pilotage area to board a ship and anchor, berth, moor or move it; or
- (c) light or mark construction works; or
- (d) remove a buoy, mooring or anything else that is obstructing, or may obstruct, navigation; or
- (e) put out, remove or screen, or take other action in relation to, a source of interference.

(5) If the harbour master attaches the ship to another ship or a buoy, wharf or pile, this Act does not prevent the owner or master of the other ship, or the owner of the buoy, wharf or pile, from recovering from the owner or master of the first ship damages for injury or loss suffered because of the attachment.

Recovery by State of expenses of carrying out direction

94.(1) This section applies if a harbour master incurs expense (whether the expense is the harbour master's expense or the State's expense) in exercising a power under section 93 (Harbour master may carry out direction).

(2) The amount of the expense may be recovered as a debt by the State by action in a court of competent jurisdiction from the persons liable for the expense.

(3) The following persons are liable for the expense—

- (a) if a direction under section 88 was given to the master of a ship¹⁰

¹⁰ Under section 86(3) and (4) (General limitation on harbour master's power to give directions under subdivision) a direction may be given to a crew member of a ship and, if so given, is taken to have been given to the master.

and the master did not comply with the direction—the master and the owner of the ship;

- (b) if a direction under section 88 could have been given to the master of a ship but was not given for the reasons mentioned in section 93(2)—the master and the owner of the ship;
- (c) if a direction was given to a person under section 89, 90, 91 or 92 and the person did not comply with the direction—the person;
- (d) if a direction under section 89, 90, 91 or 92 could have been given to a person but was not given for the reasons mentioned in section 93(2)—the person.¹¹

(4) If, under subsection (3), more than 1 person is liable for the same expense, the persons who are liable for the expense are jointly and severally liable.

Temporary closure of pilotage area by harbour master

95.(1) A harbour master may close a pilotage area or a part of a pilotage area if the harbour master is satisfied that the closure is urgently required for a limited period to ensure safety.

(2) The harbour master must immediately take the steps necessary to ensure that ships that may be affected by the closure are aware of it.

(3) The harbour master must revoke the closure when the harbour master ceases to be satisfied that the closure is still urgently required to ensure safety.

(4) However, the closure ends 14 days after the closure is made if it is not earlier revoked.

(5) When the closure ends, the harbour master must immediately take the steps necessary to ensure that ships that may be affected by the closure are aware of the ending of the closure.

¹¹ Section 88 (Direction to master about operation of ship)
Section 89 (Direction to person in charge of a place)
Section 90 (Direction to person carrying out works)
Section 91 (Direction to person about obstruction)
Section 92 (Direction to person to put out certain lights etc.)
Section 93 (Harbour master may carry out direction)

Harbour master may permit ship navigation in closed pilotage area

96.(1) If a pilotage area or part of a pilotage area is closed by a harbour master, a harbour master may permit a person to—

- (a) cause a ship to enter, leave or navigate in the pilotage area or part; or
- (b) anchor, berth or moor a ship in the pilotage area or part.

(2) If it is not practicable for the harbour master to give written permission under subsection (1), the harbour master must make a written note of the permission and its details.

Failure to comply with closure of pilotage area by harbour master

97.(1) This section applies if a harbour master closes the area or part of a pilotage area.

(2) A person must not, without a harbour master's permission—

- (a) cause a ship to enter, leave or navigate in the pilotage area or part, unless the person has a reasonable excuse; or
- (b) anchor, berth or moor a ship in the pilotage area or part, unless the person has a reasonable excuse.

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

PART 8—PILOTS

Application of part

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

Pilots required for ship navigation in pilotage areas

99.(1) A person must not navigate a ship in a pilotage area unless the person uses the services of a pilot.

Maximum penalty—the number of penalty units (rounded upwards to the next number if necessary) obtained by using the following formula—

$$\frac{\text{evaded pilotage} \times 3}{\text{the value of 1 penalty unit.}}$$

(2) In this section—

“**evaded pilotage**”, for an offence against subsection (1), means the amount that would have been paid for the use of a pilot if the subsection had been complied with.

Regulations about pilotage

100. A regulation may provide for the duties of—

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

Immunity for pilots and their employers

101.(1) A pilot and the pilot’s general employer are not civilly liable for a damage or loss caused by an act or omission of the pilot.

(2) This section does not affect—

- (a) any liability of the pilot’s general employer for not appointing a qualified and competent person as pilot; and
- (b) any liability of the ship’s master and owner.

Liability of owner or master of ship under pilotage

102.(1) The pilot who has the conduct of a ship is subject to the master's authority.

(2) The master of a ship is not relieved from responsibility for the ship's operation merely because the ship is under pilotage.

(3) The owner and master of a ship being navigated by a pilot because the pilotage is compulsory under this Act or another Act is liable for loss or damage caused by the ship, or by a fault of the navigation of the ship, as if the pilotage were not compulsory.

Offence of impersonating a pilot

103. A person must not pretend to be a pilot.

Maximum penalty—40 penalty units.

PART 9—AIDS TO NAVIGATION**Meaning of “aid to navigation”**

104.(1) An “aid to navigation” is a device designed to be used for navigation or the guidance of mariners, including a device to help in—

- (a) fixing a ship's position; or
- (b) deciding a safe course for a ship; or
- (c) warning a ship of dangers or obstructions.

Examples—

Beacon, buoy, light, lighthouse, marine mark, radio aid or signal.

(2) An “aid to navigation” includes any structure or equipment ancillary to the aid to navigation.

Examples—

1. The battery house providing a lighthouse with power.
2. Lifesaving equipment that is part of an aid to navigation.

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

Chief executive may set up aid to navigation

105.(1) The chief executive may set up an aid to navigation—

- (a) in or near a pilotage area; and
- (b) in any other place where the chief executive considers the aid to navigation is desirable to ensure the safety of people or ships or other property.

(2) The chief executive may enter into agreements for setting up an aid to navigation.

(3) This section does not limit other powers that the chief executive has to set up aids to navigation.

Unlawful interference with an aid to navigation

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

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

(2) However, if—

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

the person commits an indictable offence and is liable to a maximum penalty of 5 000 penalty units or imprisonment for 2 years.

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

Examples of detrimental interference—

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

Trespassing on aid to navigation

107. A person must not—

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

Maximum penalty—40 penalty units.

PART 10—MARINE BOARD*Division 1—The board***Establishment of board**

108. The Marine Board is established.

Functions of board

109.(1) The function of the board is to give information and advice to the Minister about—

- (a) marine safety issues; and
- (b) the referral of marine incidents to a board of inquiry.

(2) Also, the board may consider and give the chief executive advice on—

- (a) proposals to prepare draft standards; and
- (b) draft standards; and
- (c) marine safety issues including, for example, exemptions under section 18A.

(3) The board may give advice on its own initiative or if asked by the Minister or chief executive.

Composition

110.(1) The board consists of not more than 5 persons the Minister appoints as board members.

(2) The Minister must appoint a board member as its chairperson.

Division 2—Meetings of board

Time and place of meetings

111.(1) Board meetings are to be held at the times and places the board decides.

(2) However, the chairperson may call a meeting at any time.

(3) The Minister may also call a board meeting.

Presiding at meetings

112.(1) The chairperson is to preside at all board meetings at which the chairperson is present.

(2) If the chairperson is absent, the member chosen by the members present is to preside.

Quorum

113. The number that is a majority of the number of persons appointed as board members form a quorum at a meeting.

Conduct of meetings

114.(1) The board may conduct its meetings as it considers appropriate.

(2) The board may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another form of

communication.

(3) A member who takes part in a board meeting under a permission under subsection (2) is taken to be present at the meeting.

Disclosure of interests

115.(1) This section applies if—

- (a) a member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the board; and
- (b) the interest could conflict with the proper performance of the member's duties about the consideration of the issue.

(2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the board.

(3) The disclosure must be recorded in the board's minutes.

(4) In giving information or advice to the Minister about the issue, the board must inform the Minister of the disclosure.

Division 3—Provisions about members

Duration of appointment

116. A member is to be appointed for a term of not longer than 2 years.

Terms of appointment

117.(1) A member is entitled to be paid the allowances that may be decided by the Minister.

(2) A member holds office on the terms not provided by this Act that may be decided by the Minister.

Resignation

118. A member may resign by giving a signed notice of resignation to the Minister.

Termination of appointment

119. The Minister may end a member's appointment by giving a signed notice of termination to the member.

Division 4—Miscellaneous**Administrative support**

120. The chief executive must give the board the administrative support necessary to allow it to perform its functions.

Annual report on operations of board

121. The department's annual report for a financial year must include a report on the board's operations during the year.

PART 11—MARINE INCIDENTS**What is a marine incident**

123.(1) A “**marine incident**” is an event causing or involving—

- (a) the loss of a person from a ship; or
- (b) the death of, or grievous bodily harm to, a person caused by a ship's operations; or
- (c) the loss or presumed loss or abandonment of a ship; or
- (d) a collision with a ship; or
- (e) the stranding of a ship; or
- (f) material damage to a ship; or
- (g) material damage caused by a ship's operations; or
- (h) danger to a person caused by a ship's operations; or
- (i) danger of serious damage to a ship; or

- (j) danger of serious damage to a structure caused by a ship's operations.

(2) A “**marine incident**” also includes another event prescribed by regulation.

(3) However, a “**marine incident**” does not include an event declared by regulation not to be a marine incident.

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

124.(1) This section applies to a marine incident involving 2 or more ships.

(2) The master of each ship involved in the marine incident must, to the extent that the master can do so without danger to the master's ship or persons on board the master's ship—

- (a) give to each other ship involved in the incident, its master and persons on board the ship the help necessary to save them from danger caused by the marine incident; and
- (b) stay by the other ship until the other ship does not need further help; and
- (c) give to the master of the other ship reasonable particulars adequate to identify the ship and its owner.

Maximum penalty—

- (a) for contravention of paragraph (a) or (b)—500 penalty units or imprisonment for 1 year;
- (b) for contravention of paragraph (c)—40 penalty units.

(3) However, if the contravention of subsection (2)(a) or (b) causes the death of, or grievous bodily harm to, a person, the master commits an indictable offence and is liable to a maximum penalty of 5 000 penalty units or imprisonment for 2 years.

Marine incidents must be reported

125.(1) If a marine incident causing or involving the loss or presumed

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

(2) If—

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

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

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

Maximum penalty—40 penalty units.¹²

Investigation process into marine incident

126.(1) If—

- (a) a marine incident happens; or
- (b) the chief executive believes that a marine incident may have happened, even though it has not been reported;

the chief executive may require a shipping inspector to investigate the matter.

(2) After finishing the investigation, the inspector must report the results of the investigation to the chief executive.

(3) If, after considering the report, the chief executive is satisfied that a marine incident has happened, the chief executive—

- (a) may recommend to the Minister the establishment of a board of

¹² Section 125 is subject to section 14 (Marine incidents required to be reported under Commonwealth Navigation Act).

inquiry into the incident; and

- (b) may, under the regulations, cancel, suspend or amend an approval of a ship or person involved in the incident.

(4) Subsections (2) and (3) do not prevent the chief executive from—

- (a) requiring the inspector to provide interim reports to the chief executive; or
- (b) taking action mentioned in subsection (3) before the inspector has finished the inspector's investigation.

Regular reports of marine incidents to Minister

127.(1) The chief executive must prepare a report for each calendar year about all marine incidents reported within the year.

(2) The report need only contain general particulars of each marine incident and a statistical analysis.

(3) The report must be given to the Minister within 4 months after the year to which the report relates.

(4) The Minister may appoint a person who is not an officer or employee of a public sector unit to review the report and give the Minister any recommendations the person considers appropriate.

(5) The chief executive must give the person any reasonable help the person requires.

Report and any recommendations to be tabled

128.(1) The Minister must table a copy of each report under section 127 (Regular reports of marine incidents to Minister) in the Legislative Assembly within 14 days after receiving the report.

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

Report of dangers to navigation

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

Examples of possible dangers to navigation—

1. An abandoned ship
2. A damaged aid to navigation
3. A tropical storm, cyclone or similar weather conditions.

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

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

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

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

Obligation of master to give help

130.(1) If the master of a ship at sea has reason to believe that persons on or from a ship or aircraft are in distress at sea, the master must, unless the master cannot do so or, in the special circumstances of the case, considers it unreasonable or unnecessary to do so, go as quickly as possible to help the persons and, if possible, inform them that this is happening.

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

(2) The master of a ship or aircraft in distress at sea may, after consultation as far as practicable with the masters of ships that answer the master's call for help, requisition the ships that the master considers best able to help.

(3) The master of a requisitioned ship must comply with the requisition by going as quickly as possible to help the persons in distress.

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

(4) However, if the contravention of subsection (1) or (3) causes the death of, or grievous bodily harm to, a person, the relevant master commits an indictable offence and is liable to a maximum penalty of 5 000 penalty units or imprisonment for 2 years.

(5) If the master of a ship that has not been requisitioned is informed of the requisition of another ship and that the requisition is being complied with by the other ship, the master is released from the master's obligation under subsection (1).

(6) If the master of a ship is informed by persons in distress, or by the master of another ship that has reached persons in distress, that help is no longer necessary, the master is released from any obligation under subsection (1) or (3) in relation to the persons.

(7) The master of a ship must make a record—

- (a) of any information received by the master that persons on or from a ship or aircraft are in distress at sea; and
- (b) if the master did not go as quickly as possible to help the persons—the master's reasons.

Maximum penalty—500 penalty units.

PART 12—BOARDS OF INQUIRY

Division 1—General

Minister may establish or re-establish boards of inquiry

131.(1) The Minister may establish or re-establish a board of inquiry about a marine incident by gazette notice.

(2) The notice, or a subsequent gazette notice, may specify matters relevant to the inquiry including, for example, the number and appointment of members, the chairperson and the terms of reference.

(3) The Minister may exercise powers under this section for a marine incident—

- (a) whether or not the incident has been investigated under part 11 (Marine incidents) or a recommendation made to the Minister by the chief executive under that part about the incident; or
- (b) whether or not a board of inquiry had previously inquired into the incident.

Role of board of inquiry

132.(1) The board of inquiry must—

- (a) inquire into the circumstances and probable causes of the relevant marine incident; and
- (b) give the Minister a written report of the board's findings.

(2) The report may contain the recommendations the board considers appropriate and other relevant matters.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

(4) However, if the board gives the Minister a separate report of matters that the board considers should not be made public, the Minister need not table the separate report in the Legislative Assembly.

Conditions of appointment

133.(1) Members of the board of inquiry are entitled to be paid the fees and allowances that may be decided by the Minister.

(2) The members hold office on the terms not provided by this Act that may be decided by the Minister.

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

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

- (a) for the services of officers and employees of the department, shipping inspectors and other persons to be made available to the

- board for the conduct of the inquiry; and
- (b) for financial matters relevant to the board.

Shipping inspector may exercise powers for board's inquiry

135.(1) This section applies to a shipping inspector whose services have been made available to the board of inquiry.

(2) The inspector may exercise the powers of a shipping inspector under part 11 (Marine incidents) for the marine incident the subject of the board's inquiry.

Division 2—Conduct of inquiry

Procedure

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

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

(2) In conducting the inquiry, the board—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself in any way it considers appropriate, including holding hearings; and
- (c) may decide the procedures to be followed for the inquiry.

(3) However, the board must comply with this division and any procedural rules prescribed by regulation.

(4) The chairperson presides at the inquiry.

Notice of inquiry

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

- (a) the owner and master of each ship concerned in the marine

incident the subject of the inquiry; and

- (b) any other person who the chairperson has reason to believe should be given the opportunity to appear at the inquiry.

Inquiry to be held in public other than in special circumstances

138.(1) An inquiry must be held in public.

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

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

Protection of members, legal representatives and witnesses

139.(1) A member of the board of inquiry has, in the performance of the member's duties, the same protection and immunity as a judge of the Supreme Court.

(2) A barrister, solicitor or other person appearing before the board for someone else has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

(3) A person summoned to attend or appearing before the board as a witness has the same protection as a witness in a proceeding in the Supreme Court.

Record of proceedings to be kept

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

Procedural fairness and representation

141. In the conduct of the inquiry, the board must give the master and owner of each ship concerned in the marine incident the subject of the

inquiry, the opportunity of making a defence to all claims made against the person either in person or by counsel, solicitor or agent.

Board's powers on inquiry

142.(1) In conducting the inquiry, the board may—

- (a) act in the absence of any person who has been given a notice under section 137 (Notice of inquiry) or some other reasonable notice; and
- (b) receive evidence on oath or affirmation or by statutory declaration; and
- (c) adjourn the inquiry; and
- (d) disregard any defect, error, omission or insufficiency in a document; and
- (c) permit or refuse to permit a person (including a legal practitioner enrolled in Queensland or elsewhere) to represent someone else at the inquiry.

(2) A member of the board may administer an oath or affirmation to a person appearing as a witness before the inquiry.

Notice to witness

143.(1) The chairperson of the board of inquiry may, by written notice given to a person, require the person to attend the inquiry at a specified time and place to give evidence or produce specified documents or things.

(2) A person required to appear as a witness before the board is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the chairperson.

Inspection of documents or things

144.(1) If a document or thing is produced to the board at the inquiry, the board may—

- (a) inspect the document or thing; and
- (b) make copies of, photograph, or take extracts from, the document

or thing if it is relevant to the inquiry.

(2) The board may also take possession of the document or thing, and keep it while it is necessary for the inquiry.

(3) While it keeps a document or thing, the board must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at a reasonable place and time that the board decides.

Inquiry may continue despite court proceedings unless otherwise ordered

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

Offences by witnesses

146.(1) A person given a notice under section 143 (Notice to witness) must not—

- (a) fail, without reasonable excuse, to attend as required by the notice; or
- (b) fail, without reasonable excuse, to continue to attend as required by the chairperson of the board of inquiry until excused from further attendance.

Maximum penalty—40 penalty units

(2) A person appearing as a witness at the inquiry must not—

- (a) fail to take an oath or make an affirmation when required by the chairperson of the board; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by a member of the board; or
- (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by a notice under section 143.

Maximum penalty—40 penalty units.

Self-incrimination

147.(1) A person appearing as a witness at the inquiry is not excused from—

- (a) answering a question put to the person at the inquiry; or
- (b) producing a document or thing at the inquiry;

on the ground that the answer or production of the document or thing might tend to incriminate the person.

(2) However, neither the answer, nor the fact that the person has produced the document or thing, is admissible in evidence against the person in a criminal proceeding (other than a proceeding about the falsity or misleading nature of the answer, document or thing) if—

- (a) before answering the question or producing the document or thing, the person claims that answering the question or producing the document or thing might tend to incriminate the person; and
- (b) answering the question or producing the document or thing might in fact tend to incriminate the person.

False or misleading information

148.(1) A person must not—

- (a) state anything to the board of inquiry that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to the board of inquiry anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—200 penalty units.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states the statement made was false or misleading to the person's knowledge.

False or misleading documents

149.(1) A person must not give to the board of inquiry a document containing information the person knows is false, misleading or incomplete

in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the board, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) gives the correct information to the board if the person has, or can reasonably obtain, the correct information.

(3) A complaint against a person for an offence against subsection (1) is sufficient if it states the document was false, misleading or incomplete to the person's knowledge.

Contempt of board

150. A person must not—

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

Maximum penalty—40 penalty units.

Report of offences

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

- (a) the commissioner of the police service;
- (b) the Criminal Justice Commission;
- (c) the director of public prosecutions;
- (d) the chief executive.

Change of membership of board

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

PART 13—SHIPPING INSPECTORS*Division 1—General***Functions of shipping inspectors**

153. The functions of shipping inspectors are as follows—

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

Shipping inspectors subject to directions from chief executive

154. A shipping inspector is subject to the directions of the chief executive in exercising powers of a shipping inspector.

Powers of shipping inspectors under this part

155.(1) The powers given to a shipping inspector under this part are in addition to, and do not limit, the powers given to a shipping inspector

under—

- (a) another part of this Act; or
- (b) a condition of an approval.

(2) The powers under this part may be exercised in relation to—

- (a) ships; and
- (b) places specified in an approval as a place of business; and
- (c) other premises and vehicles.

(3) If a shipping inspector may exercise a power under a provision of this part and another provision of this Act, the inspector may exercise the power under either or both provisions.

(4) If a shipping inspector may exercise a power under this part and under a condition of an approval, the inspector may exercise the power under either or both.

Limitation on powers of a shipping inspector

156. The powers of a shipping inspector may be limited—

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

Division 2—Appointment of shipping inspectors and other matters

Appointment of shipping inspectors

157.(1) The chief executive may appoint any of the following persons as shipping inspectors—

- (a) officers and employees of the public service;
- (b) officers and employees of port authorities;
- (c) police officers or a class of police officers;
- (d) other persons prescribed by regulation.

(2) The chief executive may appoint a person (other than a police officer) as a shipping inspector only if—

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

Conditions of appointment of shipping inspectors

158.(1) A shipping inspector holds office on the conditions specified in the instrument of appointment.

(2) A shipping inspector—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) may resign by signed notice of resignation given to the chief executive; and
- (c) if the conditions of appointment provide—ceases holding office as a shipping inspector on ceasing to hold some other office specified in the conditions of appointment.

Shipping inspector's identity card

159.(1) The chief executive must give an identity card to each shipping inspector.

(2) The identity card must—

- (a) contain a recent photograph of the shipping inspector; and
- (b) be in a form approved by the chief executive; and
- (c) be signed by the shipping inspector.

(3) A person who ceases to be a shipping inspector must return the person's identity card to the chief executive as soon as practicable after the person ceases to be a shipping inspector, unless the person has a reasonable excuse for not returning it.

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

(4) This section does not apply to a shipping inspector who is a police officer.

Display of shipping inspector's identity card

160.(1) A shipping inspector (other than a police officer in uniform) may exercise a power in relation to a person only if the inspector displays the inspector's identity card for inspection by the person.

(2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

Protection from liability

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

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

Division 3—Powers of shipping inspectors

Entry to place by shipping inspectors

162. A shipping inspector may enter a place if—

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

Warrants

163.(1) A shipping inspector may apply to a magistrate for a warrant for

a place.

(2) The application must—

- (a) be sworn; and
- (b) specify the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

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

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

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of the commission of an offence against this Act; and
- (b) the evidence is at the place, or may be at the place within the next 7 days.

(5) The warrant must state—

- (a) that the inspector may, with necessary and reasonable help and force—
 - (i) enter the place; and
 - (ii) exercise the inspector’s powers under this Act; and
- (b) the evidence for which the warrant is issued; and
- (c) the hours of the day when entry may be made; and
- (d) the day (within 14 days after the warrant’s issue) when the warrant ceases to have effect.

Warrants—applications made other than in person

164.(1) A shipping inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the inspector's remote location.

(2) Before applying for the warrant, the inspector must prepare an application specifying the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) If the magistrate issues the warrant and it is reasonably practicable to fax a copy of it to the inspector, the magistrate must immediately fax the copy to the inspector.

(5) If the magistrate issues the warrant but it is not reasonably practicable to fax a copy of it to the inspector—

- (a) the magistrate must—
 - (i) tell the inspector what the terms of the warrant are; and
 - (ii) tell the inspector the date and time the warrant was signed; and
 - (iii) record the reasons for issuing the warrant on the warrant; and
- (b) the inspector must—
 - (i) complete a form of warrant (“**warrant form**”) in the same terms as the warrant issued by the magistrate; and
 - (ii) write on the warrant form the name of the magistrate and the date and time the magistrate signed the warrant.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, is authority for the entry and the exercise of the other powers permitted by the warrant issued by the magistrate.

(7) The inspector must send to the magistrate—

- (a) the sworn application; and
- (b) if a warrant form was completed by the inspector—the completed warrant form.

(8) The sworn application and any completed warrant form must be sent to the magistrate at the earliest practicable opportunity.

(9) When the magistrate receives the application and any warrant form, the magistrate must attach them to the warrant issued by the magistrate.

(10) If—

- (a) in a proceeding a question arises whether the exercise of a power was authorised by a warrant issued under this section; and
- (b) the warrant is not produced in evidence;

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

Boarding of ships and entry of vehicles

165.(1) A shipping inspector may board a ship at any reasonable time of the day or night to find out whether this Act is being complied with.

(2) A shipping inspector may also board a ship or enter a vehicle at any reasonable time of the day or night if the inspector has reasonable grounds for suspecting that—

- (a) the ship or vehicle is being, or has been, used in the commission of an offence against this Act; or
- (b) the ship or vehicle, or a document or other thing in or on the ship or vehicle, may provide evidence of the commission of an offence against this Act.

Boarding of ship that is moving or about to move

166.(1) This section applies if a shipping inspector intends to board a ship under section 165 (Boarding of ships and entry of vehicles), including a ship that is being carried or towed by a vehicle.

(2) If the ship or the vehicle carrying or towing the ship is moving or about to move, the inspector may signal the person in control of the ship or vehicle to stop the ship or vehicle or not to move it.

(3) To enable the ship to be boarded, the inspector may—

- (a) act with any necessary and reasonable help and force; and
- (b) require the person in control of the ship or vehicle to give reasonable help to the inspector.

(4) A person must not disobey a signal under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(5) A person must not fail to comply with a requirement under subsection (3)(b), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(6) It is a reasonable excuse for a person to disobey a signal under subsection (2) if—

- (a) the person reasonably believes that to obey the signal immediately would have endangered the person or someone else; and
- (b) the person obeys the signal as soon as it is practicable to obey it.

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

167.(1) A shipping inspector who boards a ship, or enters a vehicle or place, under this part may—

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

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

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

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

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

Maximum penalty—40 penalty units.

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

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

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

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

Maximum penalty—40 penalty units.

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

(6) The inspector must not enter a part of a ship or vehicle that is used only as a living area, or exercise powers under subsection (1)(a) to (f) in relation to the part, unless the inspector is accompanied by the person in control of the ship or vehicle.

(7) Subsection (6) does not apply if the person in control of the ship or

vehicle is unavailable or unwilling to accompany the inspector or the inspector is unable for another reason to comply with the subsection.

Power to seize after boarding ship or entering a vehicle

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

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

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

Power to seize evidence from places

169.(1) A shipping inspector who enters a place under this part under a warrant may seize the evidence for which the warrant was issued.

(2) A shipping inspector who enters a place under this part with the consent of the occupier may seize the particular thing for which the entry was made if the inspector believes on reasonable grounds the thing is evidence of an offence against this Act.

(3) A shipping inspector who enters a place under this part may also seize another thing if the inspector believes on reasonable grounds—

- (a) the thing is evidence of the commission of an offence against this Act; and
- (b) the seizure is necessary to prevent—
 - (i) the concealment, loss, death or destruction of the thing; or
 - (ii) the use of the thing in committing, continuing or repeating the offence.

Procedure after thing seized

170.(1) As soon as practicable after a thing (including a ship or vehicle) is seized by a shipping inspector under this part, the inspector must give a receipt for it to the person from whom it was seized.

(2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must—

- (a) leave the receipt at the place where the thing was seized; and
- (b) ensure the receipt is left in a reasonably secure way in a conspicuous position.

(3) The inspector must allow a person who would be entitled to the seized thing if it were not in the inspector's possession—

- (a) to inspect it; or
- (b) if it is a document—to take extracts from it or make copies of it.

(4) The inspector must return the seized thing to the person at the end of—

- (a) 6 months; or
- (b) if a prosecution for an offence involving it is started within 6 months—the prosecution for the offence and any appeal from the prosecution.

(5) Despite subsection (4), the inspector must return the seized thing to the person immediately the inspector stops being satisfied its retention as evidence is necessary.

(6) However, the inspector may keep the seized thing as mentioned in subsection (4) if the inspector believes, on reasonable grounds, that its continued retention is necessary to prevent its use in committing an offence against this Act.

Shipping inspector may direct that ship stays at, or goes to, safe anchorage

171.(1) This section applies if a shipping inspector believes, on reasonable grounds, that life may be endangered because—

- (a) a ship that is being, or is about to be, operated is not safe; or
- (b) a ship cannot be operated safely.

(2) The inspector may, by written direction, require the master of the ship—

- (a) if the ship is in a pilotage area—to keep the ship at the ship's

anchorage, berth or mooring or to take the ship to an anchorage, berth or mooring; or

- (b) in any other case—to take the ship to the nearest safe anchorage, berth or mooring;

to enable the ship to be further inspected and, if necessary, surveyed.

- (3) The master must comply with the direction.

Maximum penalty—200 penalty units.

(4) However, if a contravention of subsection (3) causes the death of, or grievous bodily harm to, a person, the master commits an indictable offence and is liable to a maximum penalty of 5 000 penalty units or imprisonment for 2 years.

(5) The inspector may not exercise the power under subsection (2)(b) if it is reasonable to require the ship to be inspected at its next port of call.

Shipping inspector may direct ship is surveyed and order repairs

172.(1) This section applies to a ship that—

- (a) is the subject of a direction under section 171 (Shipping inspector may direct that ship stays at, or goes to, safe anchorage); or
- (b) has been allowed to go to its next port of call because a shipping inspector decided that it was reasonable to require the ship to be inspected at the port.

(2) A shipping inspector may board the ship, inspect it and, if the inspector considers necessary, direct that it be surveyed as specified by the inspector.

(3) If the shipping inspector is satisfied that life may be endangered because of the state of the ship, the shipping inspector may, by written direction, order the master—

- (a) not to operate the ship until specified works are carried out to the ship or the ship is provided with specified equipment; or
- (b) to operate the ship only under specified conditions that the shipping inspector considers appropriate for its safe operation.

(4) The master must not contravene a direction under this section.

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

(5) However, if a contravention of subsection (4) causes the death of, or grievous bodily harm to, a person, the master commits an indictable offence and is liable to a maximum penalty of 5 000 penalty units or imprisonment for 2 years.

Division 4—Other enforcement powers of shipping inspectors

Power to require name and address

173.(1) A shipping inspector may require a person to state the person's name and address if the inspector—

- (a) finds the person committing an offence against this Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the inspector to suspect on reasonable grounds the person has just committed an offence against this Act.

(2) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.

(3) The inspector may require the person to give evidence of the correctness of the person's name or address if the inspector suspects, on reasonable grounds, that the name or address given is false.

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

Maximum penalty—40 penalty units.

(5) If a police officer who is a shipping inspector believes on reasonable grounds that—

- (a) a person has not complied with a shipping inspector's requirement under subsection (1) or (3); and
- (b) proceedings by way of complaint and summons against the person would be ineffective;

the police officer may arrest the person without warrant.

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

Power to require information from certain persons

174.(1) This section applies if a shipping inspector suspects, on reasonable grounds—

- (a) an offence against this Act has happened; and
- (b) a person may be able to give information about the offence.

(2) The shipping inspector may require the person to give information about the offence.

(3) When making the requirement, the shipping inspector must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.

(4) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

(5) It is a reasonable excuse for the person to fail to give information if giving the information might tend to incriminate the person.

(6) The person does not commit an offence against this section if the information sought by the shipping inspector is not in fact relevant to the offence.

Power to require production of documents

175.(1) A shipping inspector may require a person to produce a document required to be kept by the person under this Act to the inspector for inspection.

(2) The person must produce the document, unless the person has a reasonable excuse for not producing it.

Maximum penalty—40 penalty units.

(3) The shipping inspector may keep the document to take an extract from it or make a copy of it.

(4) The shipping inspector must return the document to the person as soon as practicable after taking the extract or making the copy.

Division 5—Other enforcement matters

False or misleading information

176.(1) A person must not—

- (a) state anything to a shipping inspector that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to a shipping inspector anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—200 penalty units.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states the statement made was false or misleading to the person's knowledge.

False or misleading documents

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

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the shipping inspector, to the best of the person's ability, of how it is false, misleading or incomplete; and
- (b) gives the correct information to the inspector if the person has, or can reasonably obtain, the correct information.

(3) A complaint against a person for an offence against subsection (1) is sufficient if it states the document was false, misleading or incomplete to the person's knowledge.

Compensation

178.(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part.

(2) Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

Shipping inspector to give notice of damage

179.(1) A shipping inspector who, in the exercise of a power under this part, damages anything must promptly give written notice of the particulars of the damage.

(2) The notice must be given—

- (a) if the thing is a ship or is on a ship—to the ship's master; or
- (b) in any other case—to the person who appears to the inspector to be the owner of the thing.

(3) If, for any reason, it is not practicable to comply with subsection (2), the shipping inspector must—

- (a) leave the notice at the place where the damage happened; and
- (b) ensure the notice is left in a reasonably secured way in a conspicuous position.

Consent to entry

180.(1) This section applies if a shipping inspector intends to seek the consent of an occupier of a place to the entry of the place by the inspector under this part.

(2) Before seeking the consent, the inspector may inform the occupier that the occupier may refuse to give the consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must—

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

Evidence of consent

181.(1) This section applies to a proceeding if—

- (a) a question arises whether an occupier of a place consented to the entry of the place by a shipping inspector under this part; and
- (b) an acknowledgment under section 180 (Consent to entry) is not produced in evidence.

(2) In a proceeding to which this section applies, the court may presume the occupier did not consent unless the contrary is proved.

Obstruction of shipping inspectors

182.(1) A person must not obstruct a shipping inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) If a person has obstructed a shipping inspector, the inspector must—

- (a) warn the person it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and
- (b) identify the act or omission that the inspector considers is the obstruction.

(3) If the person continues to commit the act or make the omission, or again commits the act or makes the omission, after the inspector has complied with subsection (2), a shipping inspector who is a police officer may arrest the person without warrant.

Impersonation of shipping inspector

183. A person must not pretend to be a shipping inspector.

Maximum penalty—40 penalty units.

PART 14—ORDERLY CONTROL OVER SHIPS

Division 1—General

Illegal boarding of or remaining alongside or hovering near a ship

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

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

Maximum penalty—40 penalty units.

Offence of failing to leave a ship

185. A person must not remain on board a ship if—

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

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

Maximum penalty—40 penalty units.

Unlawful interference with ship

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

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

(2) However, if the contravention of subsection (1) causes the death of, or grievous bodily harm to, another person, the person commits an indictable offence and is liable to a maximum penalty of 5 000 penalty units or imprisonment for 2 years.

(3) A person unlawfully interferes with a ship if the person wilfully, and without authority, justification or excuse, detrimentally interferes with the safe operation of the ship.

Example of detrimental interference—

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

Division 2—Passenger carrying ships**Application of division**

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

Exclusion of person from ship

188.(1) In this section—

“**master**” includes a person authorised by the master.

(2) A ship's master may refuse to allow a person to board a ship if the master is of the opinion, on reasonable grounds, that the person may annoy or injure other persons on the ship because of the person's intoxicated condition or disorderly or violent behaviour.

(3) A ship's master may refuse to allow a person to board a ship for another reasonable reason (including, for example, that the ship was full).

(4) A ship's master may ask a person to leave the ship at a convenient port if the master is of the opinion, on reasonable grounds, that the person is likely to annoy or injure, or further annoy or injure, persons on the ship because of the person's intoxicated condition or disorderly or violent behaviour.

Miscellaneous offences by passengers etc.

189.(1) In this section—

“**master**” includes a person authorised by the master.

(2) A person must not board or attempt to board a ship after the ship's master has, under section 188(2) or (3) (Exclusion of person from ship), refused to allow the person to board the ship.

(3) A person who is required under section 188(4) to leave a ship must leave the ship.

(4) A person on a ship must not annoy or injure, or continue to annoy or injure, anyone else on the ship after being warned not to do so by the ship's master or a member of the crew.

Maximum penalty—40 penalty units

Obstruction of master or crew

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

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

(2) In this section—

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

Arrest by ship’s master

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

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

PART 15—PROCEEDINGS

Jurisdiction preserved

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

Jurisdiction for offences

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

Presumption of jurisdiction

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

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

195.(1) If a district in which a court has jurisdiction is next to the coast or navigable water, the court's jurisdiction over—

- (a) a ship on or lying or passing off the coast or in or near the navigable water; and
- (b) all persons on or belonging to the ship;

includes the jurisdiction the court would have if the ship were in the district.

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

Offences are summary unless expressly indictable etc.

196.(1) An offence against this Act is a summary offence, unless it is expressly provided to be an indictable offence.

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

Proceedings for indictable offences

197.(1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

(2) A magistrate must not hear an indictable offence summarily if—

- (b) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
- (b) the magistrate considers that the charge should be prosecuted on indictment.

(3) If subsection (2) applies—

- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (d) before committing the person for trial or sentence the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

(4) The maximum penalty that may be summarily imposed for an indictable offence is 2 500 penalty units or imprisonment for 18 months.

Limitation on who may summarily hear indictable offence proceedings

198.(1) A proceeding must be before a magistrate if it is a proceeding—

- (a) for the summary conviction of a person on a charge for an indictable offence; or
- (b) for an examination of witnesses for a charge for an indictable offence.

(2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Limitation on time for starting summary proceedings

199. A proceeding for an offence by way of summary proceeding under the *Justices Act 1886* must start within 1 year after—

- (a) the commission of the offence; or

- (b) the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence;

whichever is the later.

Special provision for service of documents

200.(1) A document may be served on the master of a ship or a member of the ship's crew by leaving it—

- (a) if, at the time of service, there is a person on board who is apparently in charge of the ship—with the person after explaining to the person the purpose of the document; or
- (b) in any other case—in a reasonably secure way in a conspicuous position near the ship's controls.

(2) If a document is required or permitted to be served on the master of a ship and there is no master or apparently there is no master, the document may be served on the owner of the ship.

(3) A document is served on all owners of a ship if it is served on any person mentioned in section 9 (Meaning of “owner”).

(4) Nothing in this section effects—

- (a) the operation of another law that requires or permits service of a document other than as provided in this section; or
- (b) the power of a court or tribunal to authorise service of a document other than as provided in this section.

Evidentiary provisions

201.(1) This section applies to a proceeding under this Act or another Act prescribed by regulation.

(2) Unless a party, by reasonable notice, requires proof of—

- (a) the appointment of the chief executive, a harbour master or a shipping inspector; or
- (b) the authority of the chief executive, a harbour master or a shipping inspector to do anything under this Act;

the appointment or authority must be presumed.

(3) A signature purporting to be the signature of the chief executive, a harbour master or a shipping inspector is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by the chief executive, a harbour master or a shipping inspector and stating any of the following matters is evidence of the matter—

- (a) a specified document is—
 - (i) an approval or a copy of an approval; or
 - (ii) a direction or decision, or a copy of a direction or decision, given or made under this Act; or
 - (iii) a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act;
- (b) on a specified day, or during a specified period, a specified person was or was not the holder of an approval or a specified approval;
- (c) a specified approval was or was not in force on a specified day or during a specified period;
- (d) on a specified day, a specified approval—
 - (i) was suspended for a specified period; or
 - (ii) was cancelled;
- (e) on a specified day, a specified person was given a specified order or direction under this Act;
- (f) a specified fee or other amount is payable under this Act by a specified person and has not been paid.

Conduct of company directors, employees or agents

202.(1) In this section—

“engaging” in conduct includes failing to engage in conduct.

“representative” means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or

(b) for an individual—an employee or agent of the individual.

“**state of mind**” of a person includes—

(a) the person’s knowledge, intention, opinion, belief or purpose; and

(b) the person’s reasons for the intention, opinion, belief or purpose.

(2) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a corporation about particular conduct, it is enough to show—

(a) the conduct was engaged in by a representative of the corporation within the scope of the representative’s actual or apparent authority; and

(b) the representative had the state of mind.

(3) Conduct engaged in for a corporation by a representative of the corporation within the scope of the representative’s actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been engaged in also by the corporation unless the corporation establishes it took reasonable precautions and exercised proper diligence to avoid the conduct.

(4) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of an individual about particular conduct, it is enough to show—

(a) the conduct was engaged in by a representative of the individual within the scope of the representative’s actual or apparent authority; and

(b) the representative had the state of mind.

(5) Conduct engaged in for an individual by a representative of the individual within the scope of the representative’s actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been engaged in also by the individual unless the individual establishes the individual took reasonable precautions and exercised proper diligence to avoid the conduct.

PART 16—APPEALS

Appeals

203.(1) A person whose interests are affected by a decision under this Act about any of the following matters may appeal against the decision to a District Court—

- (a) the registration of a ship;
- (b) a certificate of compliance or survey for a ship;
- (c) licensing of a person to be the master, a crew member or a pilot of a ship;
- (d) accreditation of a person as a ship designer, ship builder or marine surveyor;
- (e) a decision declared by regulation to be a decision against which an appeal may be made to a District Court.

Examples of decision that may be appealed against to a District Court—

1. A decision to refuse to grant an application to accredit a person as a marine surveyor.

2. A decision to cancel the registration of a ship.

(2) A person whose interests are affected by another decision under this Act may appeal against the decision to a Magistrates Court.

(3) However, the following decisions cannot be appealed against nor a review sought—

- (a) a decision of the Governor in Council;
- (b) a decision of the Minister about the Marine Board or a board of inquiry;
- (c) a decision of the chief executive about a standard;
- (d) a decision declared by regulation to be a decision that cannot be appealed against.

(4) A person who may appeal against or seek a review of a decision is entitled to receive a statement of reasons for the decision.

(5) An appeal lies under subsections (1) and (2) against a decision made

by a delegate of the chief executive who is an officer or employee of the department only if the applicant has sought a review by the chief executive of the decision.

(6) The *Transport Planning and Coordination Act 1994*, sections 31 to 35, and 36(3) to (5), apply to an appeal or review under this Act.

Time for making appeals

204.(1) An appeal by a person against a decision must be made before the end of 28 days after—

- (a) a document specifying the decision was given to the person; or
- (b) if the document did not include a statement of reasons for the decision and the person asked for a statement of reasons within 28 days after the document was given to the person—the person is given the statement of reasons.

(2) However, the court to which an appeal against a decision lies may at any time extend the period for making an appeal.

PART 17—MISCELLANEOUS

False or misleading documents

205.(1) A person must not, for the purposes of this Act, give to the chief executive or an officer or employee of the department a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the chief executive, officer or employee, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) gives the correct information to the chief executive, officer or employee if the person has, or can reasonably obtain, the correct

information.

(3) A complaint against a person for an offence against subsection (1) is sufficient if it states the document was false, misleading or incomplete to the person's knowledge.

Signals of distress

206.(1) A person must not—

- (a) use or display a prescribed signal of distress other than under a regulation; or
- (b) cause or permit someone else to use or display a prescribed signal of distress other than under a regulation.

Maximum penalty—200 penalty units.

(2) If—

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

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

Maximum penalty—200 penalty units.

(3) However, if the contravention of subsection (1) or (2) by a person causes the death of, or grievous bodily harm to, someone else, the person commits an indictable offence and is liable to a maximum penalty of 5 000 penalty units or imprisonment for 2 years.

(4) If an offence against this section is proven against a person by a court, the court (whether or not it convicts the person) may order the person to pay to the State or another person an amount that represents reasonable compensation for loss or expense suffered, work undertaken and risk incurred because of the person's act or omission.

Chief executive's power to fix speed limits for ships

206A.(1) The chief executive may fix speed limits for ships by gazette notice.

(2) The gazette notice is subordinate legislation.

(3) A person must not operate a ship at a speed of more than a speed limit fixed under this section.

Maximum penalty—200 penalty units.

(4) The chief executive may erect or mark, at a place in waters for which a speed limit is fixed under subsection (1) or adjacent to the waters, a sign (a “**speed sign**”) stating the speed limit for the waters.

(5) A speed sign may be an official traffic sign except that the speed indicated by the number on the sign is the speed in knots.

(6) This section does not prevent a regulation making provision about speed limits.

(7) If there is an inconsistency between a regulation and a gazette notice, the regulation prevails to the extent of the inconsistency.

PART 18—REGULATIONS**Regulation making power**

207. The Governor in Council may make regulations under this Act.

Marine safety regulations—generally

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

Example—

The establishment, registration and control of buoy moorings.

(2) Without limiting subsection (1), a regulation may be made about the design, building, surveying, maintenance, equipment, crewing, and stability of ships and handling the ship's cargo (including livestock).

(3) A regulation may—

- (a) specify the objectives to be achieved and maintained under the regulation; and
- (b) specify indicators, parameters, factors or criteria to be used in measuring or deciding any quality or condition of the matter dealt with in the regulation; and
- (c) establish a program by which the specified objectives are to be achieved and maintained; and
- (d) provide for a program performance assessment procedure (including performance indicators).

Regulations about fees and charges

209.(1) A regulation may be made about the fees and charges payable under this Act.

(2) A charge may be a tax.

Penalties under regulations to be limited

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

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

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

Examples—

1. The Prevention of Collisions Convention (within the meaning of the Commonwealth Navigation Act, part IV).
2. The Safety Convention (also within the meaning of the Commonwealth Navigation Act, part IV).
3. Resolutions, codes, recommendations and other documents issued by the International Maritime Organisation.

(2) A person must not contravene a regulation made under subsection (1) that is declared to be a regulation to which this subsection applies, unless the person has a reasonable excuse.

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

Regulations may give effect to Uniform Shipping Laws Code

212. A regulation may give effect (with or without changes and whether in whole or part) to the Uniform Shipping Laws Code adopted by Commonwealth, State and Territory Ministers.

Regulations about dangerous substances

213.(1) A regulation may make provision about goods mentioned in the International Maritime Dangerous Goods Code issued by the International Maritime Organisation, including, for example—

- (a) the marking and carriage of the goods; and
- (b) the loading of goods onto, or discharge of goods from, a ship in a pilotage area.

(2) The regulation may also make provision for the powers of harbour masters for the ships.

(3) A person must not contravene a regulation made under subsection (1) that is declared to be a regulation to which this subsection applies, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—500 penalty units.

(4) A regulation about a dangerous substance that is an explosive within the meaning of the *Explosives Act 1952* is complementary to that Act.

Regulations about signals of distress

214. A regulation may make provision about—

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

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

Pilotage fees and conservancy dues

215.(1) A regulation may make provision about—

- (a) pilotage fees for the services of a pilot in a pilotage area, including, for example, setting the fees by reference to a ship's tonnage and having regard to the need to ensure that pilotage services are provided in an efficient way; and
- (b) conservancy dues for the provision and maintenance of aids to navigation; and
- (c) the procedures for the payment of pilotage fees and conservancy dues; and
- (d) the procedures for recovering pilotage fees or conservancy dues payable under this Act.

(2) A pilotage fee or conservancy due may be a tax.

Detention of ships for unpaid fees etc.

216.(1) A regulation may make provision for the detention of a ship because—

- (a) pilotage fees, conservancy dues or other fees, charges or amounts payable for the ship have not been paid; or
- (b) a penalty payable by the owner or master of the ship has not been paid.

(2) The regulation must provide for fair procedures for the detention of a ship, including, for example, the giving of notice to the owner or master of the ship about the detention.

(3) The notice about the detention must be signed by—

- (a) if the ship is in a port—the chief executive; or
- (b) if the ship is in a pilotage area—the chief executive or a harbour master.

(4) The notice must also contain information about—

- (a) the reasons for the detention; and
- (b) the way the owner or master of the ship can give security for the payment of the amounts payable to the State in relation to the ship; and
- (c) the way the detention can be appealed against; and
- (d) other relevant matters.

(5) A person must not cause a ship to leave the port or pilotage area where it has been detained unless—

- (a) the chief executive or a harbour master has released the ship from detention; or
- (b) a harbour master has directed the ship to depart the pilotage area because of safety considerations; or
- (c) a court has ordered that the ship may leave the port or pilotage area.

Maximum penalty—the number of penalty units (rounded upwards to the next number if necessary) obtained by using the following formula—

$$\frac{\text{amount owing} \times 3}{\text{the value of 1 penalty unit.}}$$

(6) The owner of a ship is liable for the costs, under a regulation, of detaining the ship.

(7) In this section—

“**amount owing**”, for a ship detained under this section, means the total of—

- (a) the amount owing to the State for which the ship has been detained (including any interest payable on the amount); and
- (b) costs payable for the detention of the ship.

Regulations about aquatic events and activities

217. A regulation may make provision about the safety of ships or persons in relation to any of the following events or activities—

- (a) a race, or speed trial, for any type of ship;
- (b) a water skiing competition or display;
- (c) any other type of display on water, including, for example, a fireworks display;
- (d) a swimming race or other organised activity on water, including, for example, the swimming leg of a triathlon or an attempt to establish a long distance swimming record;
- (e) an event involving people on the water in or on a thing as part of a carnival, competition, fun race or other activity;
- (f) another event or activity that takes place wholly or partly on or in water, including, for example, white water rafting, parasailing, canoeing and kayaking.

Other matters for regulations

218. A regulation may make provision about—

- (a) speed limits for ships and the use of devices to measure the speed of ships; and
- (b) the removal of obstructions to navigation outside pilotage areas; and
- (c) the security required by the State for the removal of obstructions to navigation (whether in or outside of a pilotage area); and
- (d) if a harbour master or someone else removes an obstruction to navigation—selling or disposing of the thing that caused the obstruction and, if relevant, dealing with the proceeds of the sale; and
- (e) approving the establishment of buoy moorings.

PART 19—TRANSITIONAL PROVISIONS

References to former Act etc.

220. A reference in an Act or document—

- (a) to the former Act or the *Marine Safety Act 1994* is a reference to this Act; and
- (b) to the former board, a member of the former board, the secretary to the former board or the portmaster is a reference to the chief executive; and
- (c) to a vessel (within the meaning of the former Act) is a reference to a ship (within the meaning of this Act).

Existing approvals, consents, licences, permits etc.

224.(1) This section applies if, immediately before the commencement, a matter was authorised—

- (a) under the former Act because of an approval, consent, licence or permission; or
- (b) under an instruction of the former board.

(2) The grantee or holder of the approval, consent, licence or permission or person complying with an instruction is taken to be the holder of an approval under this Act that authorises, to the greatest practicable extent, the same matter.

(3) The approval is, to the greatest practicable extent, subject to the same conditions that applied to the matter immediately before the commencement.

(4) However, the approval does not authorise a matter that cannot be authorised under an approval granted under this Act.

(5) The approval expires 1 year after the changeover day, unless it is a licence to drive a speedboat or a matter to which subsection (1)(b) applies.

(6) This section expires—

- (a) for a matter other than an approval that is a licence to drive a speedboat or a matter to which subsection (1)(b) applies—1 year after the changeover day; or
- (b) for a licence to drive a speedboat—on 30 June 2002; or
- (c) for an instruction of the former board—when the matter of the instruction ceases to apply under the instruction.

(7) In this section—

“instruction” means an authorisation or standard practice instruction about ship design, construction or equipment purporting to have been given by the former board under the repealed Act as in force from time to time before its repeal.

Power of chief executive to amend authorisations and standard practice instructions

224A.(1) *The chief executive may, by written instrument, amend an authorisation or standard practice instruction about ship design, construction or equipment purporting to have been given by the former board under the repealed Act.*

(2) *However, the chief executive may only amend the authorisation or instruction before the changeover day.*

(3) *The amended authorisation or instruction has effect for section 224.*

(4) *This section expires on the changeover day.¹³*

Transitional provision about speed limits

230.(1) On the commencement of this section, a speed limit fixed under a regulation and in force immediately before the commencement is taken to be a speed limit fixed by the chief executive.

(2) However, a speed limit taken under subsection (1) to have been fixed

¹³ This provision has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

by the chief executive is repealed on the commencement of a gazette notice under section 206A replacing the speed limit.

(3) This section expires 2 years after it commences.

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 May 1997. Future amendments of the Transport Operations (Marine Safety) Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
pev	=	previous			

4 Table of earlier reprints

Reprint No.	Amendments included	Reprint date
1	none	20 June 1994
2	to Act No. 9 of 1995	26 April 1995
3	to Act No. 58 of 1995	24 January 1996

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Table of changed names and titles	3

6 List of legislation

Transport Operations (Marine Safety) Act 1994 No. 14

date of assent 27 April 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 3 June 1994 (1994 SL No. 177)

Note—The changeover day is 31 December 1995 (see s 219)

as amended by—

Transport Infrastructure Amendment Act (No. 2) 1994 No. 49 s 6 sch 2

date of assent 14 September 1994

commenced 18 November 1994 (1994 SL No. 399)

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 s 3 sch 1

date of assent 1 December 1994

commenced on date of assent

Transport Operations (Road Use Management) Act 1995 No. 9 s 92 sch 1

date of assent 5 April 1995

commenced on date of assent

Statute Law (Minor Amendments) Act 1995 No. 50 ss 1, 3 sch

date of assent 22 November 1995

commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Transport Operations (Marine Safety) Amendment Act 1996 No. 63

date of assent 9 December 1996

ss 12–13 commenced 6 January 1997 (1996 SL No. 429)

ss 19–20 commenced 3 June 1994 (see s 2(2))

remaining provisions commenced on date of assent

7 List of annotations**Short title**

s 1 amd 1994 No. 87 s 3 sch 1

Commencement

s 2 om R3 (see RA s 37)

Objectives of this Act

s 3 amd 1994 No. 49 s 6 sch 2; 1996 No. 63 s 4

Definitions

s 4 def “port” sub 1994 No. 49 s 6 sch 2

Exempting of person or ship from regulatory provision

s 18A ins 1996 No. 63 s 5

What is a standard

s 31 amd 1994 No. 49 s 6 sch 2; 1996 No. 63 s 6

How are harbour masters and shipping inspectors accountable

s 36 amd 1996 No. 37 s 147, sch 2

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

s 42 amd 1995 No. 9 s 92 sch 1; 1995 No. 58 s 3 sch; 1996 No. 63 s 7

Standards

s 45 amd 1994 No. 49 s 6 sch 2

Notice of proposal to prepare draft standard

s 47 amd 1996 No. 63 s 8

Preparation of draft standard

s 48 amd 1996 No. 63 s 9

Notice of draft standard

s 49 amd 1996 No. 63 s 10

Making of standard

s 50 amd 1996 No. 63 s 11

Approval of standard

s 52 om 1994 No. 49 s 6 sch 2

Regulations prevail over standards

s 53 amd 1994 No. 49 s 6 sch 2

Regulation may require licences

s 60 amd 1995 No. 9 s 92 sch 1

Building of ships

s 66A ins 1995 No. 9 s 92 sch 1

Restriction on building of shipss 67 prov hdg sub 1995 No. 9 s 92 sch 1
amd 1996 No. 63 s 12**PART 5—REGISTRATION, LICENSING, PERMITS AND ACCREDITATION**

pt hdg ins 1996 No. 63 s 13

Division 5—Other provisions about ship design and survey

div hdg ins 1996 No. 63 s 13

Chief executive may approve ship design

s 70A ins 1996 No. 63 s 13

Statements in certificate of survey

s 70B ins 1996 No. 63 s 13

Protection from liability

s 70C ins 1996 No. 63 s 13

Recovery by State of expenses of carrying out direction

s 94 amd 1995 No. 9 s 92 sch 1

PART 10—MARINE BOARD

pt hdg sub 1996 No. 63 s 14

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